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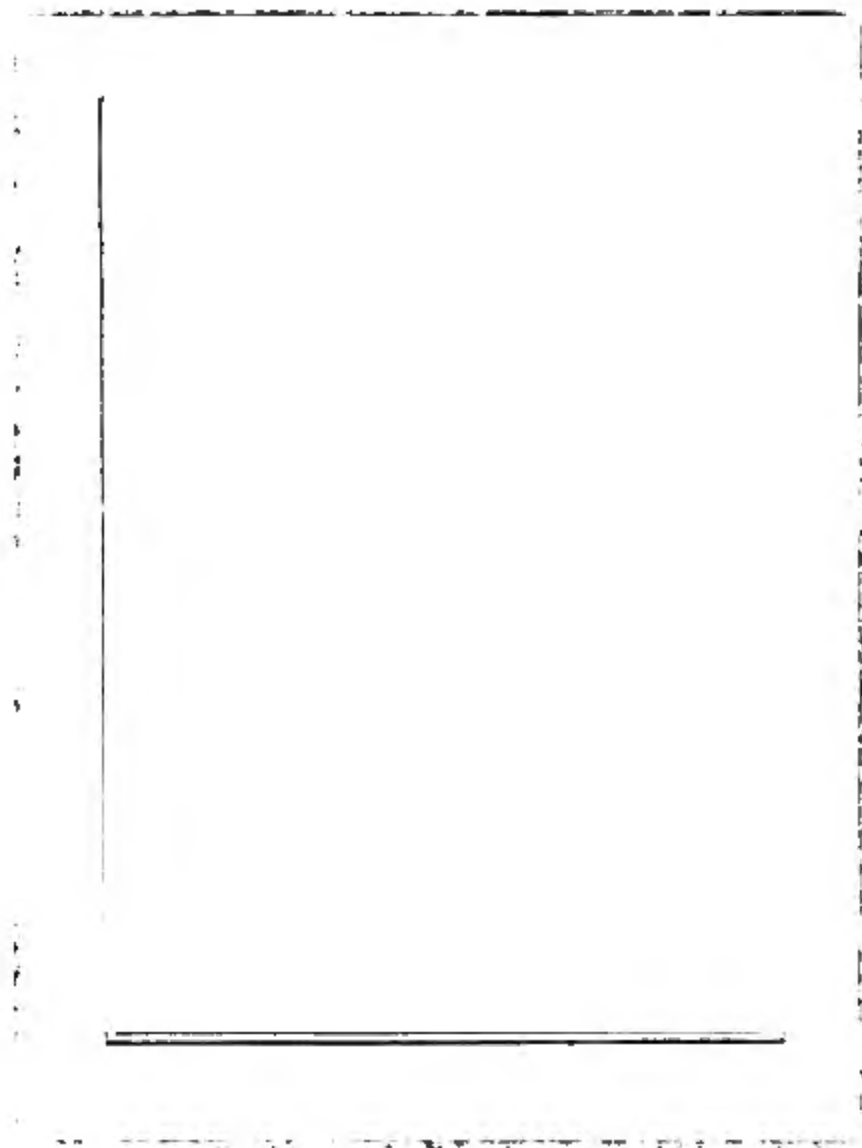
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**DOCUMENTS**  
**OF THE**  
**ASSEMBLY**  
**OF THE**  
**STATE OF NEW-YORK,**  
**FIFTY-FIFTH SESSION,**  
**1832.**

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**VOLUME III.**  
**FROM No. 175 TO 275 INCLUSIVE.**

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**1832.**

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44



**No. 175.**

**IN ASSEMBLY,**

**February 23, 1832.**

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**ANNUAL REPORT**

**Of George W. Gunn, an Inspector of Beef and Pork  
in the county of Cayuga.**

*To the Honorable the Legislature of the State of New-York.*

I, George W. Gunn, an inspector of beef and pork of the county of Cayuga, respectfully report, that for the year 1831, I have inspected and branded 63 barrels pork, 25 mess and 38 prime, total 63, also 110 barrels beef, 59 mess and 51 prime, total 110.

Value of mess pork, \$12 per barrel, value of prime pork, \$9 per barrel, value of mess beef, \$10 per barrel, value of prime beef, \$7 per barrel.

Fees, ..... \$31.63

G. W. GUNN,  
*Inspector.*

*January 12, 1832.*

[A. No. 175.]



**IN ASSEMBLY,**

**March 1, 1832.**

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**REPORT**

**Of the select committee on the practicability of introducing the manufacture of silk, and the propriety of giving a bounty upon the cultivation of the mulberry tree:**

**Mr. Van Schaick, from the select committee appointed to take into consideration the practicability of introducing the manufacture of silk, and the propriety of giving a bounty upon the cultivation of the mulberry tree,**

**REPORTED:**

**The origin of the culture of silk is lost in remote ages. The Chinese assert that their nation was employed in its manufacture 2,700 years before the Christian era, and it still continues to be a primary article of the consumption and commerce of that vast empire. In process of time the secret of its production and manufacture became known in Europe, but centuries elapsed before they were permanently established among its people. The advantages to be derived from its introduction were so obvious and important, that frequent and long continued attempts were made by the governments of that continent to ingraft the culture of the mulberry tree and the production of silk into their systems of agriculture and manufactures. Many of those efforts failed from a want of knowledge and experience in the process, some from the intervention of wars and consequent neglect; and the failure of those made in England is ascribed to the nature of its climate, which, from its humidity and coldness, was found to be unpropitious to the perfect development of the culture in all its branches.**

The more genial climate of France offered facilities for the culture, unknown to that of the British isles ; but even in France the difficulties to be encountered in converting old habits into new modes of life, and in acquiring a knowledge of the art, were such that all their projects failed, until in the time of Louis XIV. when the government offered a reward of three livres to each cultivator, for every tree that should be found in a thriving condition at the end of three years after it had been planted. This measure appears to have been crowned with entire success, as no complaint is made after that period of any failure, except of such partial injury as arose from sanguinary wars and dreadful revolutions ; and at this day we find France next in importance to the Kingdom of Silk itself, as China is called, in the extent of its production and commerce in that valuable article.

The culture and manufacture of silk is pursued as a national branch of industry in many other countries of Europe, but no particular accounts are given of the methods adopted to familiarise the people with its culture, except as to Russia. Peter the Great, the most industrious of men, and the most persevering in his endeavors to raise his country in the scale of nations, caused several plantations of mulberry trees to be planted and carefully cultivated in many parts of his wide dominions. Catharine followed his example. She planted and furnished with every thing necessary, a colony of four hundred men, besides women, to whom she granted ten years' exemption from all kinds of imposts, after which the cultivators were allowed to pay their taxes in silk, at a high value.

The results from these and other extensive plans of encouragement are given in the following accounts of recent date : " Establishments are now regularly formed in Russia for manufacturing silk of native production, and the inhabitants flatter themselves with the expectation that in a few years they shall become independent of Persia for a supply of this article."

In Sweden, the energy of the present government is disseminating the culture wherever it can be pursued, and it is said of the silk produced, " that it has confirmed in the most ample manner the superior pureness and solidity of silk grown in the north, compared with that from more temperate climes."

The difficulties that Europe had to contend against will not be found in our progress. We can go to the work with the lights of

her experience, and carry it forward under auspices more favorable than any she ever knew. All that will ever be required from the government will be the immediate but moderate encouragement of the culture of the tree, and the establishment, at some future period, of one or more filatures in suitable parts of the State. And in support of those measures, your committee report the following important and decisive facts, which are derived from the communications of gentlemen, whose general ability, and whose particular acquaintance with this subject entitle their opinions to unqualified acceptance.

1. The soil and climate of this State, and indeed of every State in the Union, is entirely favorable to the culture of silk. The white mulberry, on the foliage of which the silk worm feeds, and which is better adapted for the production of good silk than any other vegetable substance, can be raised in every part of the State. It has been successfully cultivated as far north as the county of Jefferson in great perfection. Your committee are favored with a communication from Le Ray de Chaumont, Esq. of Jefferson county, a gentleman celebrated for his agricultural skill and public spirit, in which he says that "He this year exhibited nearly five hundred small trees, and a fine specimen of cocoons, and from a neighboring farmer a specimen of sewing silk, which he describes as being truly beautiful. His experiments warrant the conclusion that we can raise the worms with as much success, and a great deal less care, than they require in many parts of Europe, and that our climate is not only suitable to their existence, but uncommonly favorable to produce the best kinds of silk."

The culture of the mulberry tree from the seed is an easy and certain operation, and almost every kind of soil is propitious to its growth. The expense is absolutely insignificant, all that is required being a little attention and care.

2. It has been ascertained by actual experiment, both in France and England, that American silk, if not superior, is at least equal to the silk of any other country. The cocoons yield more than those of France and Italy, and their produce is of as fine a texture and equal in nerve to the silk of any other country, and when well reeled it loses less than the Italian in wastage.

For nearly seventy years several towns in the county of Windham, in Connecticut, have paid attention to the culture of silk, and

your committee learn, of late years, with great and increased profit, insomuch, that farms which had become nearly sterile, having been devoted to the mulberry have richly rewarded their proprietors, and yet for causes which will be hereafter mentioned, the profits have been much less than they might have acquired by a perfect system.

3. The treasury reports present the astonishing fact, that in some years the importation and consumption of silk fabrics in the United States have been of greater value than the whole amount of bread stuffs exported, so that the industry and labors of the farmers of the United States, have been appropriated to the purchase and introduction of a luxury, with which the country could, with the greatest facility, supply itself; and indeed, not only do that, but in a few years produce a new staple, which would not fail to become a source of wealth.

If, then, your committee are so far correct, what is to prevent the people of this State from going extensively into the culture of silk? Will this new branch of industry detract from or impair other agricultural pursuits? Your committee confidently believe it will not; the feeding and care of the worms, until the cocoon is produced, is the work and employment of women and children, and other persons physically incapacitated for hard labor; it requires only a small portion of time in each day to gather the leaves and feed the worm; the whole process from the hatching of the egg, to the formation of the cocoon comprising only about forty days. When it is considered that the extensive introduction of machinery in our manufactories of wool and cotton has greatly superseded the household productions of the spinning wheel and the loom, and thus exempted our women in a great degree from those labors; an employment in some other department of industry, seems not only desirable, but necessary.

There is another point of view in which the culture of silk is strongly to be commended. The system of county poor-houses is going extensively into operation; these establishments must necessarily contain aged, infirm, and decrepid persons, and many deserted children, who could be most agreeably and profitably employed in the culture of silk. These establishments having each a farm, would in a few years, if the work was begun with spirit and zeal, have a sufficient number of mulberry trees to employ their inmates during



the proper season, in a very lucrative pursuit, and your committee believe in a manner which in a few years will relieve the several counties from taxation for their support.

Your committee however are compelled to say, that their anticipations of the benefits to be derived from the culture of silk, depend altogether on the introduction into the United States, of the art of skilfully reeling the silk from the cocoons, for it is certain that they cannot be exported; their bulk and insusceptibility of compression without great injury, and their liability to damage on ship-board, forbid the idea of their exportation. The art of filature or extracting the silk from the cocoons, is one of very difficult acquirement, unless it be under the instruction and direction of a competent and skilful instructor; indeed it may be said that the art cannot be thoroughly acquired through any theoretical treatise, or any thing short of practical instruction.

To revert to the towns in Connecticut, where the culture of silk has been prosecuted for so many years, and where we are naturally to expect the utmost ingenuity, there nothing has yet been produced but sewing silk. It is true that the long continued exertions of that industrious and ingenious people, have greatly improved the manufacture of sewing silk, and it has been a source of profit to those who have embarked in that occupation. But how much more profitable would have been their labors had they understood the art of filature well, so as to apply that precious material to the fabrication of stuffs.

Your committee are informed that the French and Italian sewing silks are fabricated from imperfect cocoons, or refuse silk, and yet from the machinery of which the use is understood, sewing silk thus produced, is superior to that of Connecticut. Is it not manifest, that those industrious people, who devote their best silk to sewing silk, must be sacrificing great advantages which they would otherwise realize, if they were capable of producing raw silk fit for the finest fabrics?

Your committee feel fully authorised to say, that at all events the art of filature can be acquired by unaided efforts, but slowly and imperfectly; and that there is danger of bringing discredit on American silk, and discouragement among the agriculturists, unless we begin right and devise some method of availing ourselves of the ex-

perience of some competent foreigner. Fortunately such an opportunity now exists.

A Mr. DeHomergue, perfectly qualified to instruct in that art, is now in the United States, and a bill is pending in the House of Representatives for the establishment of a school at Philadelphia, or its vicinity, for the instruction of sixty young men to be taken from the States in proportion to their population, in the art of filature, and the preparation of silk for market, or manufacture in the United States. The plan is, that after these young men have acquired the art, they in their turn shall establish filatures in the several States, to instruct others, and thus two important things are secured, a market for cocoons at home, and a perfect system of reeling for manufacture or exportation.

Peter S. Duponceau, Esquire, of Philadelphia, a man alike distinguished for science and patriotism, has been the means of detaining Mr. DeHomergue in the United States, for the last three years, at a charge of several thousand dollars, that the United States might avail themselves of his high qualifications in the art of extracting silk from cocoons and preparing it for market.

Mr. Duponceau has, for the two last years, purchased all the cocoons he could at 40 cents a pound, and has caused several women to be instructed. The silk thus produced has been sent to France, England and Mexico. The English manufacturer attests its good quality, and states that it lost in the process of throwing, dying and weaving but  $3\frac{5}{8}$  per cent, whilst the Italian lost from 4 to 10 per cent. Mr. Duponceau has presented to the Speaker of the House of Representatives beautiful specimens of manufactures from this silk. Information from France as to the quality of the silk reeled by Mr. DeHomergue has been received, highly commending it. The silk sent to Mexico, though of a coarser quality, sold for \$4.75 a pound.

The committee regard the bill before Congress as of incalculable importance, and should it become a law, and the art of filature be thus early and perfectly introduced into the United States, it can not fail to be attended with great and rich results.

One of which will be an extension of our foreign trade, as may be inferred from the following statement of raw silk imported into Great Britain, to supply her manufactories, and nearly all of which was consumed within her own dominions.

In the 5 years preceding 1791, she imported of raw  
 and thrown (or spun) silk,..... 5,400,000 *lbs.*  
 In the 5 years preceding 1824, ..... 10,926,000 “

In 1824 Mr. Huskisson opened his budget of free trade, for the purpose of extending the consumption of the manufactures of his own country, and as one necessary means of attaining that object, he reduced the duty on raw silk from 6s. 8d. to 3d. per lb. and on thrown silk from 13s. 4d. to 5s. The result was that in the five following years, she imported 18,532,000 lbs. being nearly double the importations of the five preceding years. The effects of Mr. Huskisson's policy are also beginning to be distinctly visible in the increased export of British fabrics of silk, silk and cotton and silk and wool, interfering in some cases very seriously with the markets formerly occupied almost exclusively by the French. The advantages of an ultimate participation in such a trade, should we not succeed in manufacturing the silk for our own consumption, are too important to be slighted, even though they may not be realized for 10 or 20 years to come. We always have been, and for a long time shall continue to be, deeply indebted to Great Britain, for manufactured goods. To add a new article to our means of paying her would be policy of the wisest kind. Another consideration of national importance in favor of this culture, is, that our importations of silk goods from France and China, are constantly draining us of specie, which can only be prevented by procuring a supply of the material sufficient for our own purposes, from our own soil and our own industry.

The committee need not enlarge upon the importance of the culture of silk, in this State. Having a soil and climate admirably adapted to its production, it would seem to be a duty which the Legislature, as the public servants and trustees, owe to the people, to do every thing within their power to open this new branch of industry, which can not fail to meliorate the condition of our farmers, to alleviate the sufferings of the poor, and to advance the moral condition of the community.

The committee, hoping that Congress will adopt and sanction the bill now before the House of Representatives, have confined themselves to proposing a measure intended to accelerate the planting of mulberry trees, generally, throughout the State, so that we may be prepared to receive and enjoy the first benefits to be derived from this culture. It has been supposed that a bounty on the raising of

the mulberry tree, added to the prospect of future gain, would most effectually invite the attention of agriculturists, and secure the speedy introduction of a general culture of silk. But as the Legislature may, in its discretion, think proper to hold that measure in reserve for a future occasion, your committee content themselves with recommending the distribution of seed of the white mulberry tree, and of a manual on the culture of silk, throughout the State at the public expense. And have instructed their chairman to ask for leave to report a bill, in conformity with this plan of encouragement.

**IN ASSEMBLY,**

**March 1, 1832.**

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**REPORT**

**Of the select committee, on the petition of Isaac Webb, and Nicholas Masters.**

**Mr. Kemble, from the select committee, to whom was referred the petition of Isaac Webb, and Nicholas Masters,**

**REPORTED :**

The petitioners represent, that in the year 1790, lot number 37, in the town of Hannibal, then in the county of Montgomery, now county of Oswego, was granted, by letters patent, to Thomas Plato, a soldier of the revolution, for bounty lands. The said patent recited that the said lot contained six hundred acres of land. In 1804, the petitioners became the bona fide purchasers of the land, and continued to hold it, and to pay taxes upon it, as for six hundred acres, until April, 1812, when they sold the same to one Alfred Clark, and upon the representation of the quantity of land, made in the patent, warranted the same to the said Clark, to be six hundred acres.

After the purchase of the said land, the said Clark discovered that it did not contain the quantity for which he had purchased it, falling short that quantity nearly two hundred acres. The petitioners therefore were called upon, under their deed of warranty, to refund the proportionate part of the purchase money, which they did.

The committee are satisfied that the foregoing facts are true.— They have examined the documents furnished by the petitioners, all of which corroborate their statement. To prove the amount of the deficiency, the affidavit of William Moore, the surveyor, with that of his chain-bearers, has been laid before the committee, and also an

attestation to the competency of the surveyor, of three respectable citizens.

The petitioners pray that the amount of money which they were compelled to refund under the guaranty made upon the faith of the State, may be repaid to them. The committee consider the prayer to be reasonable, and that consequently it ought to be granted.

The error in the original survey is admitted and accounted for by the Surveyor-General, in a report made to the Senate, April 8, 1817. At that time Mr. Van Buren asked and obtained leave to bring in a bill, the provisions of which gave the relief to the petitioners, which they now seek. But the late period at which the bill was reported prevented any action upon it at that session.

The average amount which the petitioners received for the land from Clark, was four dollars and fifty cents per acre, and the amount which they refunded to supply the deficiency of the 200 acres, is nine hundred dollars. The committee have directed their chairman to report a bill directing the payment to them of that sum ; leaving the question, whether the petitioners are entitled to any interest, wholly to the decision of the House.



**IN ASSEMBLY,**

**March 3, 1832.**

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**REPORT**

**Of the committee on grievances, on the petition of  
Gilbert D. Dillon.**

**Mr. Granger, from the committee on grievances, to which was referred the petition of Gilbert D. Dillon,**

**REPORTED AS FOLLOWS:**

**That the petitioner is a resident of the town of Kingston, in the county of Ulster, and in the year 1828, while first lieutenant of a company of artillery, received an order from the Adjutant-General, commanding all artillery companies to fire a gun, every half hour, from noon until sunset, as a testimony of respect for the memory of De Witt Clinton, then late Governor and Commander-in-Chief; that while engaged in the performance of this duty, the petitioner, by the accidental discharge of the gun, was severely wounded, and for several months was confined to his room, suffering extreme pain; and that in consequence of said wound, his right arm and wrist have ever since been and now are stiff, and nearly useless. In addition to the pain endured and the privations imposed upon the petitioner, it has been shewn that his business suffered severe derangement from this disaster, the consequences of which have been peculiarly afflictive.**

**These facts present a case entitled, in the opinion of your committee, not only to the personal sympathy, but to the benevolence of those, who are the constituted almoners of the public bounty.—The law regulating the militia and the public defence, declares that “every person, who, whilst in the actual service of the State, shall be wounded or disabled in opposing or suppressing any invasion or insurrection, shall be taken care of, and provided for at the expense**

of the State" ; and although it may be said that the petitioner does not come within the letter, it is confidently submitted, that his case is embraced by the spirit of that law.

Acting under the orders of his superior officer, the petitioner has been not only materially injured in his business and property, but is rendered a cripple for life, and your committee can discover no good reason why ample provision should be made for citizen soldiers, who may be wounded in suppressing insurrection, and that those who have suffered in the discharge of other military duties, lawfully imposed, and for the non-performance of which they would be liable to public disgrace, should be left with no reward, but the consciousness that they have performed their duty.

If it should be said that such a law would be without precedent upon our statute books, your committee can only reply, that in a government like ours, it requires no precedent to authorize the mingling of justice with humanity, when the act proposed will neither impoverish the treasury, nor tarnish the honor of the State. They therefore ask leave to introduce a bill.

**IN ASSEMBLY,**

**March 1, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on petitions of inhabitants of Dutchess and Westchester counties, relative to the Highland turnpike company.**

**Mr. Disbrow, from the committee on the establishment and improvement of roads and bridges and the incorporation of turnpike companies, to which was referred the petitions of a number of inhabitants of the counties of Dutchess and Westchester, relating to the Highland turnpike company,**

**REPORTED :**

**That the petitioners represent, that by acts of the Legislature passed the 14th April, 1815, sec. 2d, and an act 3d April, 1818, and an act 3d April, 1821, sections 1st and 2d, relative to the Highland turnpike company, giving to those persons living on or near said turnpike road a right to elect and to work out their highway work on said turnpike road, as on other highways of their respective towns, and those choosing to work on said turnpike road, are placed under the control of said company, and the said company get the benefit of all their labor.**

**The petitioners further represent it as a grievance, because the inhabitants living on or near said turnpike road do elect to work on said turnpike road for the purpose of having one gate toll free, and in consequence give to the company of said turnpike road the benefit of all their labor, which ought to be bestowed on other highways in said towns.**

**It is also represented to your committee, by the affidavit of John S. Parker, of the town of Poughkeepsie, and subscribed before S.**

**[A. No. 179.]**

B. Dutton, justice of the peace, that he, living with his mother, and having care of her business, they did elect to work out their highway assessment on the Highland turnpike road, on condition of having the privilege of passing one gate toll free; and that they were not called on to work on said turnpike road, nor on any other road that year.

On examination of an affidavit of Wm. C. Hodge, subscribed before S. B. Dutton, justice of the peace, that in the year 1821 he hired of the Highland turnpike company one of the gates belonging to said company, for a certain sum yearly, and to keep a certain portion of said turnpike road in repair, and at the same time the said turnpike company appointed him highway master to oversee the working of said turnpike road, and to solicit persons living on or near said turnpike road to work out their assessment of highway work on said turnpike road; and in order to induce such persons to work on said turnpike road he had power to make such bargains as he pleased, and such as would most benefit him and said company; and his usual practice was to give such persons the privilege of passing one of the gates free from toll, if they would elect to work out their highway work on said turnpike road. About four years ago he left the gate, and he has been informed by the president of the said company, as well as by other persons, that one year there was no work done on said road, although persons did elect to work on said turnpike road as formerly.

And it also appears, from the affidavit of Josiah Williams, that he did agree with the company to work out his assessment of highway work on said turnpike road, if he could have the privilege to pass one gate toll free, which the company did agree to.

From the face of the petitions and affidavits accompanying the same, it appears to your committee that the company has used means to cause the people to elect to do work on the turnpike road, by offering them a gate free of toll, and in consequence the other roads have been neglected, and have got very much out of repair for want of a sufficient number of inhabitants living on these roads, (near the turnpike road,) to keep them in repair, on account of so many of them electing to work on said turnpike road.

Your committee, from an examination of the acts set forth in the petitions, passed April 14th, 1815, section 2d, and the act passed April 3d, 1818, and the act passed April 3d, 1821, sections 1st and

**Id, find that it will not be any infringement upon their incorporated rights by repealing the aforesaid sections.**

**Your committee, therefore, are of the opinion that the prayer of the petitioners ought to be granted, and have prepared a bill, and now ask leave to present the same.**





**No. 180.**

**IN ASSEMBLY,**

**March 1, 1832.**

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**MESSAGE**

**From the Governor, transmitting the annual report  
of the governors of the New-York hospital.**

**TO THE ASSEMBLY.**

**GENTLEMEN,**

I send you herewith the annual report of governors of  
the New-York hospital.

**E. T. THROOP.**

*Albany, February 29, 1832.*

[A. No. 180.]



## **ANNUAL REPORT**

### **Of the Governors of the New-York Hospital.**

*To the Legislature of the State of New-York, in Senate and Assembly convened.*

**The governors of the New-York hospital respectfully report,**

That during the year 1831, there have been 1,870 patients admitted into the hospital, who, with 187 patients remaining there on the 31st December, 1830, make 2,057 patients who have received the benefit of the institution, during the past year. Of that number 1,381 have been cured; 112 relieved; 139 have been discharged at their own request, or that of their friends, and 29 as improper objects; 18 have eloped, or been discharged as disorderly; 159 have died, and 219 remained on the 31st December last.

The above numbers are exclusive of the maniac patients, of whom 151 have been admitted into the Bloomingdale asylum, and with 92 remaining there on the 31st December, 1830, make 243 who have received the benefit of that asylum during the past year. Of these 141 were old, and 102 recent cases: 76 have been cured; 14 have been discharged, much improved; 3 as improved; 29 at the request of friends; 4 have been transferred to the alms-house; 19 have died, and 98 remained in the asylum on the 31st December last. Of the cures 14 were of old cases, and 62 of recent cases.

The amount of expenditures for the support of the hospital, (exclusive of the Bloomingdale asylum,) for the year 1831, has been \$24,655.13. The receipts, including the annuity of \$12,500, allowed by the State, the money received from the United States for the care of sick and disabled seamen, and from all other sources, amount, in the whole, to \$30,299.26, leaving a balance in favor of the hospital of \$5,644.13. The expenditures for the support of the Bloomingdale asylum, for the past year, have been \$14,747.29. The amount which became due for board during the same period was \$16,890.64. There was actually received for board, for vegetables sold, and from all other sources, except the annuity of \$10,000, granted by the State, \$17,296.77. Of the annuity \$8,220

has been paid for interest on the money borrowed of William Edgar and Herman Le Roy; the residue, together with \$445, which remained in the hands of the treasurer on the 31st December, 1830, making in all \$2,225, has been applied to the Sinking fund. The whole of the debts due to the asylum for board amount to \$9,924.47, of which a considerable part can not be collected.

The whole amount of debts due from the corporation on the 31st December, 1831, was \$142,047.15: and the Sinking fund amounted to \$26,627.27.

During the past year the governors have endeavored to diminish the expenses, and to increase the usefulness of the institution. Among other means adopted for the latter purpose, they have engaged a respectable physician, (who, for several years, has had the immediate charge of the insane patients,) to visit Europe, for the purpose of examining the hospitals and making himself acquainted with the œconomy, management and mode of cure practised in the best institutions of the kind there. He sailed in July last, has visited the hospitals of Great Britain, and, when last heard from, was pursuing his inquiries at Paris. It is hoped that he will return with a large mass of useful information. In the mean time the place of resident physician at the asylum has been filled by a gentleman, the results of whose practice have been honorable to him, and satisfactory to the governors.

The governors have learned with pleasure that the subject of relieving the insane has attracted the particular attention of the Executive and Legislature. They have attended to the suggestions of a committee of the Assembly, by whom they have been visited, and they will be happy to aid in effecting the philanthropic views of the government, whose almoners they are in administering the charity confided to their care.

*7th February 1832.*

**PETER AUGUSTUS JAY, *President.***

**ROBERT I. MURRAY, *Secretary.***

**No. 181.**

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**IN ASSEMBLY,**

**February 21, 1832.**

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**REPORT**

**Of the committee on claims, on the petition of John Shiland.**

Mr. J. Miller, from the committee on claims, to which was referred the petition of John Shiland,

**REPORTED:**

That by his petition, it appears he is an inhabitant of Cambridge in the county of Washington. That in the year 1808, and for years afterwards, he was the owner of two several lots of land situate in the town of Putnam in the county aforesaid, known and distinguished as lots numbers 84 and 88 in John Williams's north tract; and that although a non-resident, he was assessed personally with taxes for his real estate in said two lots, from the year 1808 to 1823 inclusive; which taxes, he further represents, were duly paid by an agent of the petitioner to the collector of said town, who paid the same to the county treasurer. That notwithstanding the petitioner was thus personally assessed for said two lots of land, and paid the taxes, the collector of said town returned lot number 88, as being non-resident, on which the taxes remained unpaid, in the years 1808, 9, 10, 11 and 12; which several taxes, with the charges, amounted to less than five dollars; and for the non-payment of said sum, lot number 88 was sold by the Comptroller in the year 1815, which lot is alleged then to have been worth more than one thousand dollars.

The petitioner further sets forth, that from the year 1809 until the year 1821, the said lot was possessed by a family who were by law liable to pay the said taxes, and had ample means to pay the same, had they have been called upon for such payment, &c.

From which premises the petitioner concludes he is remediless, and without any other resort; and hence asks the Legislature to relieve him by an advance from the treasury.

Two affidavits made in 1825—one by Elijah Odell, and the other by Charlotte Odell—are presented with the petition, in each of which it is positively sworn, that the deponents and their family resided upon said lot number 88, from the summer of 1809 to the year 1821; and the said Elijah additionally swears, that during all that time there was sufficient property on the premises to have paid the taxes, had they have been called for by the collector.

Another affidavit is presented, made on the 4th February, 1825, by Peter Hutton, who deposes that he was collector of the town of Putnam for the years 1808, 9 and 10; and that he paid the taxes on two lots of land said to belong to John Shiland, into the county treasury, for the aforesaid three years; upon which subject he expresses himself in the following words, to wit: "That in the year 1810, one of said lots were returned number 60, and one number 84; and that he has returned and sworn of lot number 88 as belonging to John Knickerbacker, each of the aforesaid three years, to the best of his recollection."

From which it appears to the committee, the petitioner advanced money to pay the taxes, as he no doubt intended, assessed upon the lands he owned, to wit, lots numbers 84 and 88 before named; but instead of having the taxes upon those two lots satisfied, his agent, if he paid at all, paid the taxes upon lots numbers 60 and 84; returning lot number 88 as belonging to Knickerbacker, a non-resident.

Thus there appears to have been a misapplication of the petitioner's money; and hence the only question between the petitioner and the public to be settled, seems to be, shall the petitioner sustain the consequence of the negligence or default of his own agent, or shall the State become voluntarily responsible for the errors of a collector, in conferring whose office but a small portion of the people's sovereignty was exercised, and over whose acts as such officer it had no particular control? Assuming what is introduced by the petitioner, and sworn to as true, the collector was the authorised agent of the petitioner; and therefore he has no claim upon the State for pecuniary relief.

The claim of the petitioner has been repeatedly renewed, and the facts diligently investigated by various committees, all of whom have

been constrained to come to the same conclusion ; of which, by the several reports and otherwise, the petitioner has been informed ; and it is hoped he will no longer persist in pressing upon the Legislature a claim, the allowance of which would be so manifestly unwarrantable. The committee, actuated by the most entire good will to the petitioner, take occasion, upon the facts asserted in his petition, and established by his several affidavits, showing the collector's return was false, to assure him that his case is not remediless ; that a valid title to the lot never passed to the purchaser, by virtue of the Comptroller's deed. The Comptroller proceeded upon the return to advertise and sell, as he ought to have done, and the correctness of his procedure is evidenced by his conveyance, and cannot be questioned ; but the truth of the return may be inquired into, and Shiland would be at liberty, in a court of law, to show the return to have been false, either in the prosecution or defence of his title, which being shown, would as a consequence, establish the want of jurisdiction, and thereby render the title of the purchaser invalid. The title of the petitioner has never been taken from him. To such conclusion upon the premises did the committee of last year come ; and its report, Assembly Documents, No. 170, contains a very conclusive brief for the use of the petitioner, founded upon a series of cases specified particularly, directly in point, and which have been repeatedly adjudicated and never shaken, both in the Supreme Court of this State and that of the United States. The course is therein so plainly marked out to the petitioner, that he may run and read. Without knocking, he will find the tribunals of justice are open, and in them need only "to seek" a remedy, and "he shall find."

The committee conceive all its duty has been discharged to the venerable petitioner, and will now acquit itself to the public by recommending for the adoption of the House the following resolution :

*Resolved*, That the relief sought by John Shiland of the Legislature be denied, and that he have leave to withdraw his petition and the documents therewith referred.





**IN ASSEMBLY,**

**February 21, 1832.**

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**REPORT**

**Of the select committee, on the petition of George Wands.**

**Mr. Seymour, from the select committee to which was referred the petition of George Wands, collector of taxes for the town of Bethlehem in the county of Albany,**

**REPORTED :**

**That the petitioner represents, that owing to the extensive territory of the town of Bethlehem, and the large population thereof, containing nearly seven thousand inhabitants, he has, with his utmost diligence, been unable to collect the taxes specified in his warrant by the time required by law. That the short time now allotted to him to collect and make his returns, will lead to great oppression if his powers are rigidly enforced ; and that an extension of the time until the 20th of March, will enable him to collect the moneys without inconvenience to the inhabitants. The facts are corroborated by the certificate of a magistrate of the town of Bethlehem. Your committee believe them true, and that the prayer of the petitioner ought to be granted. They have accordingly instructed their chairman to ask leave to bring in a bill for his relief.**



**No. 183.**

**IN ASSEMBLY,**

**March 1, 1832.**

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**MESSAGE**

**From the Governor, transmitting communications received from the Executives of the States of Massachusetts, Tennessee and Indiana.**

**TO THE ASSEMBLY.**

**GENTLEMEN,**

I transmit to you, herewith, communications received by me from the Executives of the States of Massachusetts, Tennessee and Indiana. They are accompanied by resolutions which have been passed by the Legislative bodies of their respective States, and are submitted to your consideration.

**E. T. THROOP.**

*Albany, February 29, 1832.*

**[A. No. 183.]**



## **REPORT AND RESOLUTIONS**

**Of the Legislature of the State of Massachusetts, on  
the subject of the north-eastern boundary of the  
United States.**

### **EXECUTIVE DEPARTMENT OF MASSACHUSETTS.**

*Council Chamber, Boston, Feb. 16, 1832.*

**SIR :**

In compliance with a request contained in the latter of the accompanying resolves, I have the honor to transmit to you an expression of the sentiments entertained by the government of this Commonwealth in reference to the contested line of the north-eastern boundary of the United States, the opinion and recommendation of His Majesty the King of the Netherlands for the settlement thereof, and the rights and interests of the States of Massachusetts and Maine, which would be affected by adopting that decision.

I have the honor to be,

Most respectfully,

Your obdt. servant.

**LEVI LINCOLN.**

His Excellency the Governor  
of the State of New-York.

### **COMMONWEALTH OF MASSACHUSETTS.**

*In Senate, Feb. 9, 1832.*

The committee on public lands, to whom was referred so much of the Governor's message at the opening of the present session of the General Court, as relates to the north-eastern boundary of the United States, and also a subsequent message enclosing a communication from the Governor of Maine, with accompanying documents relating to that subject, have considered the same, and respectfully submit the following

#### **REPORT :**

In the part of his message at the opening of the session, which relates to the north-eastern boundary, the Governor intimates that it may be expedient for the General Court to express their opinion, how far the proceedings of the King of the Netherlands, in regard to the matters referred to him in pursuance of the fifth article of the

treaty of Ghent, are binding upon the government of the United States, and upon the States of Massachusetts and Maine. The resolutions of the Legislature of the latter State, which accompany the Governor's subsequent message, declare in strong terms, that these proceedings are not obligatory, and request the co-operation of this Commonwealth in such measures, as may be best calculated to prevent the adoption of the boundary line, recommended by the king; Massachusetts is in fact directly interested in the question by her right of property in a considerable portion of the territory, which would be cut off from the State of Maine by that line; and as the Senators and Representatives of the Commonwealth in Congress, will be called upon in the regular discharge of their duties, to concur in the action of the general government upon this subject, it is proper and expedient that they should be distinctly informed of the views of their constituents. In presenting the result of their inquiries into this important subject, the committee will first briefly state the facts in the case, as far as may be necessary for the present purpose, and afterwards add for the consideration of the General Court, the conclusions to which those facts appear to lead.

The committee have not thought it necessary to recapitulate on this occasion, the history of the controversy between Great Britain and the United States, respecting the north-eastern boundary. This is a matter of public notoriety, and has also no bearing upon the present inquiry. The objection to the proceedings of the king of the Netherlands, has no connection with the merits of the case as between the two parties. If the king has given a decision upon the points referred to him, it is admitted that this decision, however erroneous it may appear to the government of the United States, is binding—supposing the points referred to be such as the government of the United States has a right to submit to arbitration. If the king has not given a decision upon the points referred to him, it is equally apparent that the rights of the two parties remain in the same state in which they were before the reference; and are in no way affected by any recommendation which his majesty may have thought proper to give in regard to points which were not referred to him. This remark would be true upon the ordinary principles of natural law independently of any specific engagement, and it is also confirmed by the language of the treaty of Ghent, which expressly stipulates at the close of the fourth article, that “His Britannic Majesty and the government of the United States, engage to consider the decision of the arbiter as final and conclusive upon all the matters referred to him;” thus excluding from any pretension to an obligatory character, any opinion or recommendation which he might think proper to give upon any other subject. The most important point for consideration in the present inquiry is, therefore, whether the king of the Netherlands has or has not given a decision upon the questions referred to him, in relation to the north-eastern boundary. In order to determine this question, it is of course only necessary to recur to the treaty of Ghent, and compare the terms of the submission as therein stated, with those of the document containing the results of the king's proceedings.

The fifth article of the treaty of Ghent provides, that, "whereas neither that point of the Highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers as the north-west angle of Nova Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers, which extends from the source of the river St. Croix, directly north to the above mentioned northwestern angle of Nova Scotia, thence along the said Highlands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean to the northwesternmost head of Connecticut river, thence down along the middle of the river to the forty-fifth degree of north latitude, thence by a line due west on said latitude, until it strikes the river Iroquois or Cataraquay, has not yet been surveyed; it is agreed, that, for these several purposes, two commissioners shall be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article. The said commissioners shall meet at St. Andrews, in the province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The same commissioners shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of peace of 1783, and shall cause the boundary aforementioned, from the source of the river St. Croix to the river Iroquois or Cataraquay, to be surveyed and marked according to the said provisions. The said commissioners shall make a map of the said boundary, and annex to it a declaration under their hands and seals, certifying it to be a true map of the said boundary, and particularizing the latitudes and longitudes of the north-west angle of Nova Scotia, of the northwesternmost head of Connecticut river, and of such other points of the said boundary as they may deem proper; and both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary. And, in the event of the said commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements, shall be made by them or either of them, and such reference shall be made to a friendly sovereign or state, in all respects as in the latter part of the fourth article is contained, and in as full a manner as if the same were herein repeated."

The part of the fourth article of the same treaty, which is here alluded to, as describing the form and manner in which the points in dispute are to be referred to the arbiter, is as follows:

"It is further agreed, that in the event of the two commissioners differing upon all, or any of the matters so referred to them, or in the event of either or both of the said commissioners refusing, or declining, or wilfully neglecting to act as such, they shall make, jointly or separately, a report or reports, as well to the government of his Britannic Majesty as to that of the United States, in detail of the points on which they differ, and the grounds on which their respective opinions have been formed, or the grounds upon which they, or

either of them, have so refused, declined, or omitted to act. And his Britannic Majesty, and the government of the United States, hereby agree to refer the report, or reports, of the said commissioners, to some friendly sovereign, or state, to be then named for this purpose, and who shall be requested to decide upon the differences, which may be stated in the said report or reports, or upon the report of one commissioner, together with the grounds upon which the other commissioner shall have refused, declined, or omitted to act, as the case may be; and if the commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such friendly sovereign or state, then such sovereign or state shall decide ex parte upon the said report alone. And his Britannic Majesty, and the government of the United States, engage to consider the decision of such friendly sovereign or state to be final and conclusive on all the matters so referred."

It results from the terms of these articles, and leaving out of view that part of the fifth relating to the northwesternmost head of Connecticut river, and the boundary thence to the Iroquois, which is not material to the present purpose, that the duty which devolved upon the commissioners, appointed under the fifth article, was to ascertain and define that point of the Highlands lying due north of the source of the river St. Croix, which was designated, in the former treaty, as the north-west angle of Nova Scotia, and to cause that part of the boundary line, between the dominions of the two powers, which extends from the source of the river St. Croix; due north to the above mentioned north-west angle of Nova Scotia, thence along the said Highlands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river, to be surveyed and marked according to the provisions of the treaty. No authority is given to the commissioners to ascertain and determine the respective positions of the Highlands, or of the source of the river St. Croix. Both these are supposed to be known. The position of the source of the river St. Croix had in fact been determined by a special convention, and no question had ever been raised as to that of the Highlands, which was laid down in all the maps, and described in a variety of official documents, emanating from the British government, as stretching from the western extremity of the Bay des Chaleurs, along the south side of the river St. Lawrence, at a distance from it of twenty or thirty miles. The duty of the commissioners was therefore, as has been already said, to ascertain and determine the point where a line, drawn due north from the source of the St. Croix strikes the Highlands, and to cause the boundary line, which, according to the treaty, was to run westerly from that point along the Highlands to be surveyed. Should the commissioners differ upon any of the matters referred to them, they were to make report to their respective governments of the points on which they differed, and an arbiter was to be appointed, who was to decide on view of these reports, the points of difference therein stated.



The commissioners appointed for this purpose, having disagreed, and made reports as required by the treaty to their respective governments, it was determined by the convention of Sept. 29, 1827, that the points in dispute in regard to this subject should, in conformity to the further provisions of the treaty, be referred to a friendly sovereign. The language of the convention is as follows :

"It is agreed, that the points of difference which have arisen in the settlement of the boundary between the American and British dominions, as described in the fifth article of the treaty of Ghent, shall be referred, as therein provided, to some friendly sovereign or state, who shall be invited to investigate and make a decision upon such points of difference."

It was farther provided, in another article of the same convention, that, as the reports of the commissioners were too voluminous to be conveniently examined by the arbitrier, "new and separate statements of the respective cases severally drawn up by each of the contracting parties" should be substituted for them as the basis of the decision. These new statements were accordingly prepared on each side, and, the king of the Netherlands, having been agreed upon as the arbiter, were laid before him by the plenipotentiaries of the two governments. It is to these statements that we are to look immediately for information in regard to the points which the king was authorized to decide. In stating the result of their examination of these documents, the committee leave out of view, as before, all that relates to other questions not material to the present purpose, and confine themselves to the points of difference in regard to the north-eastern boundary.

In the introductory part of his award, the king says, that the two parties had agreed upon a statement of the points of difference between them. In reality, however, these points, and particularly that relating to the north-eastern boundary are somewhat differently stated by the two parties. According to the American statement, the point of "difference is the north-west angle of Nova Scotia, and the boundary line contemplated by the treaty of 1783, extending from that angle along certain Highlands to the northwesternmost head of the Connecticut river." The British statement gives the point as follows: "The parties differ respecting the point designated in the treaties as the north-west angle of Nova Scotia, and respecting the Highlands along which the line of boundary is to be carried, which is destined to divide the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic ocean." Neither of these statements is precisely accurate in form; but the British differs from the other in representing the position of the Highlands as one of the points in dispute. The king, in his award, conforms to the British statement, and specifies the questions at issue in the following terms: "Which is the place designated in the treaties as the north-west angle of Nova Scotia, and what are the Highlands dividing the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic ocean, along which is to be drawn the boundary line from that angle to the northwesternmost head of Connecticut river?"

Notwithstanding the variation between the modes of expression of the British and American commissioners, they agree substantially in representing the situation of the Highlands, as the principal point upon which they had differed. The committee have already remarked, that it certainly was not the intention of the parties to the treaty of Ghent, that any question should be made upon this subject. When the British commissioners advanced the extravagant and preposterous pretension, that the Highlands were situated in a level region in the middle of the State of Maine, the American commissioners, might perhaps with propriety have declined to negotiate upon this point. Instead of this, however, they undertook to refute the British argument, and finally consented to refer it to the arbiter.—The king being authorized to decide upon all the questions specified in the statement, was of course justified in considering the situation of the Highlands, as one of the points referred to him: and had he given a decision in favor of the British pretensions, the Government of the United States would have been bound to acquiesce in it, except so far as it might have been considered originally null and void, for want of any constitutional power in the Government of the United States, to authorize the submission to a foreign arbiter of the question so decided.

The king, however, gave no decision upon this or any other question relating to the north-eastern boundary. After stating the question to be, as above represented:—What is the north-west angle of Nova Scotia, and what are the Highlands which divide the waters that empty themselves into the river St. Lawrence from those that fall into the Atlantic ocean?—His Majesty proceeds to recapitulate at considerable length, the arguments which have been urged by the two parties in favor of their respective pretensions, compares their forces, and finally concludes that there is not sufficient evidence on either side, to justify a decision. The language of this part of the award, according to the translation officially communicated from the Department of State, is as follows:

“The arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one [either] of the two lines respectively claimed by the high interested parties, as the boundaries of their possessions, from the sources of the river St. Croix, to the northwesternmost head of the Connecticut river; and the nature of the difference, and the vague and not sufficient determinate stipulations of the treaty of 1783, do not permit to adjudge either of those lines to one of the two parties, without wounding the principles of law and equity in regard to the other.”

The convention of 1827, had contemplated and provided for the case in which the arguments and facts contained in the statements, should not be considered by the arbiter as sufficiently satisfactory to authorize a decision in favor of either party. Under these circumstances he was to be furnished with such additional elucidations, whether of the facts or principles in question, as he might deem necessary. The article containing this stipulation, is as follows:

"In order to facilitate the attainment of a just and sound decision on the part of the arbiter, it is agreed that in case the said arbiter should desire further elucidation or evidence, in regard to any specific point contained in any of the said statements submitted to him the requisition for such elucidation or evidence shall be simultaneously made to both parties, who shall thereupon be permitted to bring further evidence, if required, and to make each a written reply to the specific questions submitted by the said arbiter, but no farther, and such evidence and replies shall be immediately communicated by each party to the other:

"And in case the arbiter should find the topographical evidence, laid, as aforesaid, before him, insufficient for a sound and just decision, he shall have the power of ordering such additional surveys to be made of any portion of the disputed boundary line, or territory, as he may think fit, which survey shall be made at the joint expense of the contracting parties, and be considered as conclusive by them."

The case here anticipated having actually occurred, it would have appeared natural, that the royal arbiter should have taken the course prescribed in the convention, and called for additional evidence. Instead of this, after declaring, in the passage quoted above, that the statements, with which he has been furnished, were not sufficient to enable him to decide in favor of either party, he proceeds to assign reasons why he does not avail himself of the faculty afforded him by the convention, of calling for additional evidence. The case, it seems, was not susceptible of any further elucidation.

"As has been already said, the question resolves itself into a selection to be made of a ground dividing the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic ocean; and as the high contracting parties are agreed with regard to the course of the streams delineated by common accord on the map A, and affording the only basis of a decision, therefore the circumstances upon which the decision (*must be founded*) could not be further elucidated, by means of fresh topographical investigations, nor by the production of additional documents."

The arbiter, having thus declared, that the case was not susceptible of a decision upon the evidence, with which he had been furnished, and also, that it was not susceptible of any further elucidation by means of additional evidence, seems to have had no alternative left but to close the proceedings, and resign his functions, without giving any opinion. Instead of this, however, after alleging his inability to pronounce a decision in favor of the line claimed by either party, he attempts to settle the difference in another way, and recommends the adoption of an entirely new boundary, not previously contemplated; or claimed on either side, and having no pretence of foundation or support in the terms of any of the treaties. The language, which conveys this extraordinary recommendation, is as follows:

"We are of opinion, that it will be suitable to adopt as the boundary of the two States, a line drawn due north from the river St. Croix, to the point where it intersects the middle of the channel of that river, ascending it to the point where the river St. Francis empties itself into the river St. John, down the middle of the chan-

nel of the river St. Francis, ascending it to the source of its southwesternmost branch, which source we indicate on the map A, by the letter X, authenticated by the signature of our minister of foreign affairs; thence a line drawn due west to the point where it unites with the line claimed by the United States of America, and delineated on the map A; thence said line to the point at which it coincides with that claimed by Great Britain, and thence the line traced on the map by the two powers to the northwesternmost head of Connecticut river."

This recommendation terminates the king's proceedings in regard to the question of the north-eastern boundary. According to the terms of the treaty of Ghent, as above quoted, the two parties engage to consider the decision of the arbiter as final and conclusive on all the matters referred to him: and it is stipulated, in the convention of 1827, that the decision of the arbiter, when given, shall be taken as final and conclusive, and shall be carried, without reserve, into immediate effect, by commissioners appointed for that purpose by the contracting parties. But, as this recommendation of an entirely new boundary is not a decision of any of the points referred to the arbiter, and is declared by himself not to be so, it is of course not binding as a decision under the stipulations of the treaties. It is hardly necessary to add, that, as the mere recommendation of a friendly sovereign, given without authority upon a point not submitted to him, it can have no obligatory character, however justly it may be entitled to the most respectful consideration. As the committee cannot suppose that this will be considered by any one as a doubtful principle, they deem it unnecessary to multiply arguments in support of it. They will merely refer, in the illustration of the abuses that would result from the adoption of a contrary principle, to the celebrated case of Bruce and Baliol, rival pretenders to the crown of Scotland, who submitted the decision of their respective claims to Edward I., then King of England, sometimes called the English Justinian. In this case, as in the one submitted to the king of the Netherlands by Great Britain and the United States, the arguments and evidence furnished by the parties, were not considered sufficient to authorize a decision in favor of either; and, in order that the difference might not remain unsettled, the English Justinian adjudged the crown of Scotland to himself. It will hardly be pretended, that this proceeding was conformable to the rules of national law; but it would have been fully justified by any principle which would give to the recommendation of a new boundary by the king of the Netherlands an obligatory power over the governments of Great Britain and the United States. If an arbiter have a right to travel out of the record of the submission, and give opinions having the force of law, upon questions not referred to him, it is obvious, that there are no limits to his authority, and that the reference, by two governments, of any question, however unimportant, to the arbitration of a third, amounts to a complete and unconditional surrender of the national rights and independence of both.

The recommendation of the king of the Netherlands is therefore not binding upon either government. It is nevertheless entitled to

very respectful consideration. It is the suggestion of a friendly sovereign, made with the best intentions, and under an impression that the adoption of it would be mutually and equally advantageous to both the parties. Although it can have no obligatory character, it may be proper to inquire, whether it is right and expedient that the government of the United States should voluntarily accede to it and give it effect.

Supposing the question of expediency to be entirely open, the committee are unable to perceive any very strong reasons for deciding it in the affirmative. They are not aware, that any material inconvenience can result from a further delay in the survey of the north-eastern boundary, as determined by the treaty of 1783, while the adoption of the recommendation of the king of the Netherlands would involve the sacrifice of a considerable tract of territory, and acquiescence, to a certain extent at least, in pretensions on the part of the British agents, which are too extravagant to be regarded for a moment as entitled to serious attention. But the committee will not enlarge upon the considerations belonging to the question of expediency, because they conceive that this question is precluded by the preliminary one of constitutional right. The government of the United States has no constitutional authority to cede to a foreign state any portion of the territory belonging to any one of the States composing the Union, without the consent of such State. They can, without a violation of this rule, settle such questions relating to the boundaries of the Union as were left doubtful by the treaty of 1783, because it is only by the settlement of these questions, that the extent of the territory of the border States can be ascertained. But the situation of the Highlands, which, according to the treaties, form the northern boundary in this quarter, is not represented, either in the treaty of 1783, or in that of Ghent, as a doubtful point. The latter treaty provides for ascertaining the point where a certain line strikes the Highlands, and for surveying another line which is described as running in a westerly direction along the Highlands. No provision is made for ascertaining the situation of the Highlands, which is spoken of as known. The government of the United States had therefore no constitutional right to allow it to be drawn in question by England, still less to submit it to arbitration; and had the king of the Netherlands decided against us on this question, the committee believe, as they have already remarked, that the act would have been wholly null and void, from a defect of authority in the government of the United States to make the submission. The only uncertainty which exists in regard to this part of the boundary, results from the want of an accurate survey of a line, the general course of which is well defined. The government of the United States had a right to cause this line to be surveyed, without regard to the effect which the survey might have upon the extent of the supposed territory of Maine in that quarter. Farther than this, it had no authority to go, without the consent of Massachusetts and Maine. But the acceptance of the recommendation would deprive these States of a large tract of territory which, under any imaginable result of the survey, would certainly belong to them, and it is therefore a measure which the government of the United States has no right to adopt, without the consent of both



States. As the State of Maine has solemnly protested against its adoption, it is wholly beyond the competency of the government of the United States to adopt it, whatever might be the opinion of Massachusetts. But as Massachusetts is directly interested in the question as well as Maine, it is obviously proper, that her opinion also should be made distinctly known.

Under these impressions of the merits of the case, and of the course best fitted under present circumstances to promote the honor and interest of the Commonwealth, the committee offer for the consideration of the General Court, the following preamble and resolves.

All which is respectfully submitted,

By order of the committee,

A. H. EVERETT.

### PREAMBLE AND RESOLVES.

**WHEREAS** the Commonwealth of Massachusetts, as proprietor of large tracts of land in the State of Maine, is directly interested in the measures that may be adopted by the government of the United States, for the purpose of defining and settling the north-eastern boundary thereof; and whereas, the subject being now under the consideration of the government of the United States, it is expedient that the General Court should express their opinion thereupon, to the end that the Senators and Representatives of the Commonwealth in Congress may be the better enabled to understand and give effect to the intentions of their constituents; therefore,

*Resolved*, by the Senate and House of Representatives, in General Court assembled, that the government of the United States possesses the constitutional right to ascertain and settle, by negotiation with foreign powers, arbitration, or otherwise, such parts of the boundary lines of the said States, as were left doubtful by the treaty of peace of 1783, but that the said government does not possess the constitutional right to alter, by negotiation with foreign powers, arbitration, or otherwise, the boundary lines of the said States, so far as the same were ascertained and settled by the said treaty, to the prejudice of the territorial or other rights of any State, without the consent of such State previously obtained.

*Resolved*, That, in the second article of the treaty of peace of 1783, it is agreed and declared, that the northern boundary line of the United States begins at the point where a line, drawn due north from the source of the river St. Croix, strikes the Highlands, and that it runs in a westerly direction along the said Highlands, which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean: that the situation of the said Highlands is, and was at the time of the conclusion of said treaty, a matter of public notoriety, the same being one of the great geographical features of the country, indicated on all the maps, and repeatedly recognized in various official documents by the British government: that, as far as the situation of the said Highlands is concerned, the northern boundary line was ascertained and settled by the treaty of 1783, and that the government of the said United States

has no constitutional right to alter the same as then ascertained and settled, whether by negotiation with foreign powers, arbitration, or otherwise, to the prejudice of the territorial or other rights of any State, without the consent of such State previously obtained.

*Resolved*, That it was agreed, by the fifth article of the treaty of Ghent, that Commissioners should be appointed, by the governments of Great Britain and the United States, to survey the northern boundary line of the said States, as ascertained and settled by the treaty of 1783, and that, in the event of a disagreement between the said commissioners, the matters in dispute between them should be referred to some friendly sovereign, to be named as arbiter, in the manner described in the said fifth article, but that it was not the intention of the said governments, and is not provided or agreed in the said fifth article, that the said commissioners should inquire into and determine the situation of the aforesaid Highlands, the same being, as aforesaid, a matter of public notoriety: that the government of the United States, in permitting the same to be made a question by the said commissioners, and to be by them submitted to the arbitration of the king of the Netherlands, without the consent of Massachusetts and Maine previously obtained, exceeded its constitutional powers, and that any decision which the said king might have given upon said question, would have been entirely null and void, for want of a constitutional power in the government of the United States to make the submission.

*Resolved*, That it appears, from the document communicated to the government of the United States by the said king, as the result of his proceedings in the arbitration committed to him, in conformity to the fifth article of the treaty of Ghent, by the governments of Great Britain and the United States, that the said king has not decided any of the questions relating to the north-eastern boundary of the said States, which were submitted to him by the commissioners of the two governments, having declared, for reasons contained in the said document, that said questions are not susceptible of any decision; and that the aforesaid document, so communicated by the king of the Netherlands, not containing any decision of the questions submitted to him, as aforesaid, by the said commissioners, is not binding upon the governments of Great Britain and the United States, or either of them, as a decision, either by the ordinary rules of international law, or by the stipulations of the treaties, which settled on the form of the arbitration.

*Resolved*, That the recommendation contained in the aforesaid document, so communicated by the king of the Netherlands, of an entirely new boundary line between certain parts of the possessions of Great Britain and the United States, being merely the suggestion of a friendly sovereign, made without authority, upon a subject not submitted to him, though entitled to respectful consideration, is not obligatory upon either of the parties to the arbitration; and that the United States are not bound, either by the ordinary principles of international law, or by the stipulations of the treaties, which settled the form of the arbitration, to adopt the said line, so recommended, as a part of their north-eastern boundary.

**Resolved,** That the adoption of the said line, so recommended by the king of the Netherlands, as a part of the north-eastern boundary of the United States, would deprive this Commonwealth and the State of Maine of large tracts of territory, which, upon any imaginable result of such survey of the northern and eastern boundaries, as is authorized by the fifth article of the treaty of Ghent, belong respectively, in sovereignty and property, to the said State and the said Commonwealth.

**Resolved,** That the government of the United States has no constitutional right to cede any portion of the territory of the States composing the Union, to any foreign power, or to deprive any State of any land, or other property, without the consent of such State, previously obtained; and that the adoption of the aforesaid new boundary line, recommended, as aforesaid, by the king of the Netherlands, without the consent, previously obtained, of the States of Massachusetts and Maine, would be a violation of the rights of jurisdiction and property, belonging respectively to the said States, and secured to them by the federal constitution; and that any act, purporting to have such effect, would be wholly null and void, and in no way obligatory upon the government or people of either of the said States.

**Resolved,** That as the adoption, by the government of the United States, of the aforesaid new boundary line, so recommended by the said king of the Netherlands, would deprive the Commonwealth of Massachusetts of large tracts of land, without equivalent, it is not expedient for the said Commonwealth to give consent thereto; and that the General Court hereby solemnly protest against such adoption, declaring, that any act, purporting to have such effect, will have been performed without the consent of the Commonwealth, and in violation of the rights thereof, as secured by the federal constitution, and will be consequently null and void, and in no way obligatory upon the government or people.

**Resolved,** That the General Court have received, with satisfaction, the communication made to them through his excellency the Governor, from the government of the State of Maine, of the proceedings of the said government, upon this subject; that they reciprocate the friendly sentiments, which have been expressed on this occasion, by that government, and will readily and cheerfully co-operate with the State of Maine, in such measures as shall be best calculated to prevent the adoption, by the government of the United States, of the new boundary line, recommended, as aforesaid, by the king of the Netherlands.

**Resolved,** That the senators of the Commonwealth in Congress, be instructed, and the representatives thereof requested, to use their influence to prevent the adoption, by the government of the United States, of the aforesaid new boundary.

**Resolved,** That his excellency the Governor be requested to transmit a copy of these resolves, and of the report preceding them, to each of the senators and representatives of the Commonwealth in Congress, to his excellency the Governor of Maine, and to the Governors of all the other States in the Union.



No. 183.]

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*In Senate, February 14, 1832.*

Read twice and passed.

Sent down for concurrence,

WILLIAM THORNDIKE, *President.*

*House of Representatives, Feb. 15, 1832.*

Read twice and passed.

W. B. CALHOUN, *Speaker.*

*February 15, 1832.*

Approved,

LEVI LINCOLN.

A true copy,

Attest,

EDWARD D. BANGS,

*Secretary of the Commonwealth.*



## RESOLUTIONS

Of the Legislature of the State of Tennessee, relative to the exercise of certain powers by the General government, and also, relative to the public lands of the United States.

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### STATE OF TENNESSEE.

SECRETARY OF STATE'S OFFICE, }  
Nashville, January 31, 1832. }

SIR:

Agreeable to the provisions of a resolution of the General Assembly of this State, I have the honor to transmit the copies of two resolutions for the consideration of the Legislature of the State over which you preside.

I have the honor to be,

Very respectfully,

Your obedient servant,

SAM. G. SMITH,

Secretary of State.

To his Excellency the Governor  
of the State of New-York.

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*A resolution in relation to the exercise of certain powers by the general government.*

*Whereas*, it is believed by this General Assembly, that a crisis has arrived in the administration of the affairs and the exercise of the powers of the general government of this Union, when it has become proper to express by legislative resolutions of the several States, the opinion entertained of the power assumed by Congress under the constitution of the United States, to make internal improvements in the several States without their consent, and to authorize the executive of the United States to subscribe stock in State incorporations for the benefit of local objects of internal improvements—and *whereas*, it is believed this power has been ex-

exercised by the Congress of the United States, to an unwarranted extent under the federal constitution of this Union; therefore

*Resolved, by the General Assembly of the State of Tennessee,* That the General Assembly most decidedly deprecate the exercise of the power which has been assumed by Congress, of appropriating money out of the treasury of the United States, to be expended upon the local objects of improvements within the several States, and in subscribing for stock under State incorporations.

*Resolved, That this General Assembly most cordially approve of* the views and sentiments of President Jackson, in relation to internal improvements by the general government, as expressed in his veto message, communicated to the Congress of the United States, upon the Lexington and Maysville turnpike road bill.

*Resolved, That the Secretary of State furnish a copy of the foregoing preamble and resolutions to each of our Senators and Representatives in Congress, and to the Executives of the States of this Union.*

F. W. HULING,  
*Speaker of the House of Representatives.*  
BURCHET DOUGLASS,  
*Speaker of the Senate.*

Adopted, September 20, 1831.

SECRETARY OF STATE'S OFFICE, }  
For the State of Tennessee. }

I certify the foregoing to be a true and perfect copy of a resolution of the General Assembly of the State of Tennessee, relating to the exercise of certain powers by the general government, and for other purposes, from the original on file in the Secretary's office.

SAM. G. SMITH,  
*Secretary of State.*

*A resolution relative to the public lands of the United States.*

*Resolved by the General Assembly of the State of Tennessee,* That our Senators in Congress be instructed, and our Representatives requested, to use their exertions to have all the vacant, unsold lands, owned or claimed by the United States in any of the States or Territories, sold, as soon as the same can be reasonably done at a graduated price.

*Resolved, That our Senators and Representatives be requested to use their endeavors to have the nett proceeds of all the public lands hereafter sold, set apart by law, as a permanent fund for the education of American children, and that such fund be distributed to the States and Territories, according to such rates as may be deemed equitable and just.*

*Resolved, That the Governor be requested to furnish our delegation in Congress with a copy of the foregoing resolutions, and*

that he transmit a copy to the Governors of the several States, with a request to have the same submitted to their Legislatures.

F. W. HULING,  
*Speaker of the House of Representatives.*  
BURCHET DOUGLASS,  
*Speaker of the Senate.*

Adopted, December 21, 1831.

SECRETARY OF STATE'S OFFICE, }  
For the State of Tennessee. }

I certify the foregoing to be a true and perfect copy of a resolution of the General Assembly of the State of Tennessee, relating to the public lands of the United States, from the original on file in the Secretary's office.

SAM. G. SMITH,  
*Secretary of State.*



## RESOLUTIONS

**Of the Legislature of the State of Indiana, relative to the officers and soldiers, and the militia of the revolutionary army, who are not entitled to pensions under any existing law, and to a more perfect organization of the militia of the several States.**

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### STATE OF INDIANA.

EXECUTIVE DEPARTMENT, }  
*Indianapolis Feb. 7, 1832.* }

SIR—

The resolutions I have the honor herewith to enclose, are transmitted in compliance with a request of the Legislature of Indiana.

With great respect,

I have the honor to be,

Your most obedient servant,

N. NOBLE.

His Excellency the Governor  
of the State of New-York.

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### A JOINT RESOLUTION

*Relative to the officers and soldiers, and the militia who bore arms in the war of the revolution, and who are not entitled to pensions under any existing law.*

WHEREAS, there remains a part of the officers and soldiers of the revolution to whom the pension law of the United States does not extend, who rendered services in defence of the liberties of their country against the unjust aggressions of the crown of Great Britain; and as at this day there are left but a feeble few of that noble band of patriots—therefore,

*Be it resolved by the General Assembly of the State of Indiana, That we fully and freely accord with the feelings, and respond to the resolution adopted by the Senate and House of Representatives of the State of Delaware, and with them cheerfully acknowledge that not only a "debt of gratitude and respect is due to those venerable patriots of the revolution," but that to smooth the rugged path*

of declining age, liberal and ample compensation should be awarded to *all* who now survive, who have borne arms in defence of their country from the commencement of hostilities in 1775 to the close of the war of the revolution, whether of the continental line, State line, or militia; under such regulations as the wisdom of Congress may think it expedient to adopt; and that our Senators in Congress be instructed, and our Representatives requested, to use all honorable means to obtain the passage of a law having for its object a subject so congenial to the wishes of a free and happy people, and at the same time so righteous and so loudly called for by gratitude and justice.

*Resolved*, That his Excellency the Governor be requested to forward a copy hereof to each of our Senators and Representatives in Congress, also a copy to the Governors of the several States, with a view that the same may be submitted to their respective Legislatures.

H. H. MOORE,  
*Speaker of the House of Representatives.*  
 DAVID WALLACE,  
*President of the Senate.*

Approved January 26, 1832.

N. NOBLE.

## A JOINT RESOLUTION

*Relative to a more perfect organization of the militia of the several States.*

*Be it resolved by the General Assembly of the State of Indiana*, That our Senators in Congress be, and they are hereby instructed, and our Representatives requested, to use their exertions, both by their votes and influence, to procure the passage of a law providing for a more perfect and uniform organization of the militia of the several States of the Union, in pursuance to the constitution of the United States.

*Resolved*, That his Excellency the Governor of this State be directed to transmit to each of our Senators and Representatives in Congress a copy of the foregoing resolution; also a copy to the Governors of other States in the Union, with a view that the same may be submitted to the consideration of their respective Legislatures.

H. H. MOORE,  
*Speaker of the House of Representatives.*  
 DAVID WALLACE,  
*President of the Senate.*

Approved, January 26, 1832.

N. NOBLE.



**IN ASSEMBLY,**

**March 1, 1832.**

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**REPORT**

**Of the select committee, on the petition of the proprietors of the New-York city Marble Cemetery.**

**Mr. M'Keon, from the select committee, to whom was referred the petition of the proprietors of the marble cemetery in the city of New-York,**

**RESPECTFULLY REPORTS:**

**That the petitioners are the owners and proprietors of vaults in a cemetery recently constructed between Second and Third-streets, in the block between the Second and First avenue in the eleventh ward of the city of New-York. According to the plan designated, the cemetery will consist of two hundred and eighty-eight vaults, of the average value of two hundred and fifty dollars each, and is located in the vicinity of the New-York marble cemetery, incorporated on the 4th day of February, 1831.**

**The petitioners being desirous that the said cemetery shall hereafter be used for the interment of the dead, and no other purpose, solicit an act of incorporation, with the same privileges and under the restrictions contained in the act passed last year in favor of the New-York marble cemetery.**

**The committee are of opinion, that the request of the petitioners does not differ from that granted to the proprietors of the New-York marble cemetery, and ought to be complied with; they have accordingly directed their chairman to bring in a bill.**



**IN ASSEMBLY,**

March 6, 1832.

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**REMONSTRANCE**

**Of the State Medical Society, against the bill introduced by Mr. Milledoler, relative to the practice of physic and surgery.**

*To the Honorable the Legislature of the State of New-York.*

The memorial of the undersigned **RESPECTFULLY SHEWETH:**

That they constitute the Comitia Minora of the State Medical Society, whose duty it is, to act in behalf of the society, during its recess, in all matters affecting its own interest, or that of the profession in general, which the society represents. It is with great reluctance that your memorialists again trouble your honorable body on the subject of medicine, well knowing that the frequent appeals made to your wisdom relative to medical matters, have justly created a disinclination to enter into an examination of the merits of the endless schemes of improvement from year to year submitted to your consideration, by different parties, all professing to be actuated solely by the public good and disclaiming any private or selfish motive.

We had indulged the hope that this year would be allowed to pass by, without applying for alterations in the law regulating the practice of physic and surgery. Although aware of some defects, which it would be desirable to remedy, the medical profession, represented in the State Medical Society, deemed it better to submit to minor evils, than to the greater ones necessarily resulting from vacillating legislation, and annual changes, in a matter so essential to the public welfare.

The State Medical Society having learned during its recent session at the Capitol, that a petition had been presented to the Legislature by the Medical Society of the city of New-York, praying for some alteration in the law regulating the practice of physic and surgery, took into consideration the expediency of applying to your honorable body for any change in the same. The subject was brought up for the express purpose of ascertaining from the delegates representing the different counties, whether dissatisfaction existed in their respective counties in regard to the law, and if such did exist, to ascertain what alteration or modification the great body of the profession desired.

It is important for your honorable body to know, that there was but one solitary individual who voted in favor of soliciting any alteration, and that individual, the delegate from the county of New-York. This fact shews that the petition from New-York, is not in accordance with the wishes of the medical profession in other parts of the State. Your memorialists would also respectfully represent that although the petition had been presented to the Legislature, and although the delegate from New-York, and the chairman of the medical committee in the House of Assembly, were both present, when the subject of praying for an alteration in the medical law, was discussed in the society, neither condescended to read to the society the petition, nor even to explain its purport. Indeed the delegate distinctly denied, that it contained some propositions, which we find in the bill submitted to the House of Assembly. These facts show very clearly, that there was a disposition not only, not to consult the wishes of the profession, but to conceal the precise objects of the petitioners. We feel assured that your honorable body will see the impropriety of listening to the petition of a *part* of the profession in *one county*, in a matter affecting the interest of the profession in the *whole State*.

Not having seen the petition from New-York, we know neither the standing nor numbers of the applicants, nor the arguments upon which they found their claims to additional privileges; but be their claims what they may, we do not see the propriety of making extensive alterations in the system of medical education now adopted in this State, without at least giving the several counties an opportunity of expressing their wishes in relation thereto. And we do not know in what manner the wishes of the profession can be more appropriately expressed, than by the delegates representing them in the State Medical Society. We therefore humbly submit, whether

in the present case, the voice of the profession has not been expressed in such a manner as to show, that the changes prayed for by some medical men in the city of New-York, are not altogether uncalled for by the rest of the State.

Having made these remarks respecting the quarter from whence the call for a change has emanated, and the manner in which your honorable body has been approached on the subject, we shall now make a few remarks on the bill, which has been submitted by the chairman of the medical committee to the House of Assembly.

The first section virtually provides for the establishment of a new, and anomalous, medical college, in the city of New-York, organized upon a plan such as we believe it never occurred to the wisdom of any former generation to suggest.

A board of examiners, distinct from the ordinary board of censors, we presume, is to be appointed by the county medical society, who shall examine candidates, and recommend the same if approved of, to the Regents of the University, for the degree of doctor of medicine. It does not appear very clearly when, or where, or how said candidates are to attend lectures, if it be even contemplated they should attend lectures at all. In this and every other State in the Union, a certain course of study is prescribed for those who aspire to the degree of doctor of medicine, but according to the provisions of the bill referred to, it appears to us that any one who can answer questions on certain subjects, and has studied a certain length of time in a private office, may present himself for examination. There is nothing distinctly said respecting the necessity of attending one or more courses of lectures either in the colleges, or in the rooms of private lecturers. The phraseology of the 6th section of the bill is not explicit. It says that the "term of study necessary to entitle a candidate to be examined by said board, shall be the same as is now by law required to obtain the degree of doctor of medicine in the incorporated medical colleges of this State;" but it does not say that the mode of study, or the requisitions, shall be the same as are now required. Now, if it be the intention of the bill to dispense with the necessity of attending lectures, we fear, should it become a law, that medical science would be but little promoted by its operation. A large proportion of students would, for the sake of economy, prefer to get knowledge from books rather than from lectures; and thus, we might have a doctor of medicine who never saw the human body

anatomically displayed—who never saw the operations of surgery performed, either on the dead or living—who never witnessed the manipulations of chemistry or pharmacy :—for it is quite possible to answer *questions* on these several subjects, satisfactorily, whilst the person so answering may really know, practically, very little respecting them.

And as to the recording in a book the questions and answers, for the satisfaction of the curious, who may wish to know how the examiners and the examined respectively acquit themselves, we are clearly of opinion that the trouble would counter-balance the benefit. It would exhaust the patience of any man to examine thirty or forty candidates properly, in such a manner, and nobody would take the trouble of examining such documents when prepared. Such a course would lead inevitably to a system of studying medicine in the way of question and answer, or what in Europe is known by the name of "*grinding*," than which nothing can be more destructive of solid improvement in medical science. And we may also add with propriety, that no mode of examination could afford more room for collusion between the examiners and the examined, than that proposed. The main security of the community against the admission of unqualified persons into the profession, whatever be the mode of examination prescribed by law, will necessarily depend on the character and capacity of those appointed examiners.

We do not think that a society, constituted as that of New-York is, consisting of three or four hundred individuals, of different views and jarring interests, at all well fitted for selecting a board of examiners more impartial, or more alive to the interests of the public, or the rights of the examined, than the boards already existing. There is already a board of censors belonging to the county society of New-York, authorised to grant full powers to practise physic and surgery; and there is also a board of censors appointed by the State Medical Society, residing in the city of New-York, with similar powers. We do not, therefore, see the necessity of any new board for the admission of candidates into the medical profession, even if the county society were to be permitted to recommend persons for the honors of the doctorate. If it were desirable to confer degrees in the manner proposed in the bill, the State Medical Society is better constituted than any other body, to select a suitable board of examiners. In so large a body as the Medical Society of

New-York, the young and unemployed will always have the numerical ascendancy, and will consequently be more likely to appoint a board of examiners, not from the prominent and most distinguished members of the society, but from the more active and managing portion of their own class. As long as human nature is the same, so long will the aspiring look with jealousy upon the elevation of those above them, no matter by what honorable means they may have attained to distinction. Does the New-York county usually appoint as examiners or censors, the gentlemen who, from their learning and experience, are best fitted for the office? If they do not, what ground have we for believing that they would be more discreet in the selection of a board for examining candidates for the degree of doctor? What security have we, that a set of young men, without learning and without experience, might not be made the judges of the qualifications of candidates for the highest honors in medicine?

But even should the board of examiners be unexceptionable in every respect, we do not believe that the interest of the public, or that of the medical profession, would be promoted by conferring degrees in the manner proposed in the bill. Were that privilege conferred on New-York, similar privileges would be solicited by other counties, and the result in a short time would be, that the great State of New-York would not possess a single medical school possessing such a standing, or affording such advantages, as would enable it to compete with the schools of other States. Every village would have its petty medical school, and every vicinity would be kept alarmed and agitated by violations of the grave, and the disturbance of the dead. The doctrines taught in these schools would be as various as the capacities and acquirements of the teachers, and a profession now united and harmonious, and not differing very widely respecting the nature or treatment of diseases, would be divided into parties, having different views, and different interests to maintain.

We do not think that the organization of the profession is better in any state or country than it is at present in this State; and we are sure that in no part of the United States has medical science made greater advances for the last fifteen years, than in the State of New-York. We do not think that our public schools receive any more protection from the State than they ought to have; indeed,

we think that on the score of endowment, the State has done rather too little for them. It would be our pride to see our schools resorted to from all parts of the Union, on account of the eminence of their professors, and the advantages they afforded from the liberal endowments of our public authorities. Should such a bill as is now proposed become a law, we are decidedly of opinion that it would prove an injury to the profession, whilst it would not benefit the public. It might prove injurious to our own public schools, but its passage would be hailed with joy by the schools of other states, whose classes would, in no long time, be swelled by its operation.

We forbear to trespass on your time and patience by dwelling on the objections to other parts of the bill. As a whole it is ill digested. Some parts of it have a local application, and some are intended to apply to the whole State; one of its sections, the 12th, is useless, inasmuch as the State Medical Society has regulated the initiation fee of the county societies. The third is unnecessary, inasmuch as the mode of examining candidates for degrees is provided for in the charters of the colleges; and the State Medical Society is empowered by its charter to designate the manner in which the examinations shall be conducted in the county societies, and by its own boards of censors. If the colleges are not conducted as they ought to be, complaint should be made to the Regents of the University, who would remedy any evil proved to exist; and we can without hesitation say, that the State Medical Society would cheerfully remedy any evils shown to arise from the present mode of examining candidates for license. We do not see the propriety or necessity of troubling your honorable body, unnecessarily, to remedy defects which other tribunals are competent to regulate, and whose duty it is to do so. We would respectfully recommend to your honorable body, to receive with caution, suggestions respecting improvements in medical education not emanating from the great body of the profession. By adopting a different course, you will be year after year troubled from some quarter or other with applications for changes, and fancied improvements.

In conclusion, we would beg leave to mention, that the profession generally would be gratified to see expunged from the statute books, the law legalizing quackery; but as the subject concerns the public much more than the medical profession, we forbear to press



it, knowing that a part of the community at least would suspect us of being influenced by selfish motives. We therefore leave that matter to the wisdom of those whose duty it is to study and watch over the welfare of the people.

JAMES McNAUGHTON, M. D., *V. Pres.*  
WILLIAM BAY, *Censor*,  
JONA. EIGHTS, *Censor*,  
PETER WENDELL, *Censor*,  
PLATT WILLIAMS, *Treasurer*,  
JOEL A. WING, *Secretary*,  
*Comitia Minora of the State Medical Society.*



**No. 186.**

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**IN ASSEMBLY,**

**March 2, 1832.**

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**REPORT**

**Of the committee on road and bridges, on the bill entitled "An act in addition to chapter 16th of the first part of the Revised Statutes, of highways, bridges and ferries."**

**The committee on roads and bridges and the incorporation of turnpike companies, on the bill referred to them, introduced on notice by Mr. Patterson, entitled "An act in addition to chapter 16th of the first part of the Revised Statutes, of highways, bridges and ferries."**

**RESPECTFULLY REPORT :**

**That the bill provides to extend the powers of commissioners of highways. Your committee have deliberately examined the same, and on due reflection, they have come to the conclusion, that the commissioners of highways have all the powers that are required to levy as much highway work as in their opinion is necessary for the year, and if they should fail in their judgment, the overseers of the several districts have power to levy so much as they shall deem necessary, not exceeding one-third of the amount assessed by the commissioners; and under these considerations your committee are of the opinion the bill ought not to pass.**



**IN ASSEMBLY,**

**March 7, 1832.**

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**REPORT**

**Of the select committee on the expediency of a total abolition of capital punishment in the State of New-York.**

Mr. Stülwell, from the select committee to whom was referred the following resolution: *Resolved*, That a select committee be appointed to inquire into the expediency of the total abolition of capital punishment in the State of New-York, submitted the following

**REPORT:**

The subject which has been referred to your committee by a resolution of this House, is so vitally important, and involves so many questions of right and expediency, that they have indulged in a greater latitude of investigation than is usual; and now respectfully claim attention, while presenting the result of their deliberations for legislative action.

A question involving the right of destroying human life is one of no ordinary magnitude. It is of vast importance to every community, and involves consequences so fatal, that neither the wealth, the wisdom nor the power of man can change, nor human sacrifice or repentance restore. Such a subject demands and has received all the consideration which time and information has placed within the reach of your committee. Each point has been investigated, and the arguments and authority condensed within as small a compass as possible, while at the same time they have sought to place before the House every view of the subject, in a light which may tend to a correct conclusion.

In the language of a celebrated political writer, "They offer nothing more than simple facts, plain arguments, and common sense ; and have no other preliminaries to settle, than that each member of this House will divest himself of prejudice and *prepossession*, and suffer his reason and his feelings to determine for themselves : that he will put *on*, or rather that he will not put *off* the true character of a man, and generously enlarge his views beyond the present day. Perhaps the sentiments here contained are not *yet* sufficiently fashionable to procure them general favor : a long habit of *not* thinking a thing *wrong* gives it a superficial appearance of being *right*, and raises a formidable outcry in defence of custom : but the tumult soon subsides—time makes more converts than reason."

We may congratulate ourselves that under the form of government we have adopted, knowledge and improvement go hand in hand. It is only necessary to convince the understanding of the propriety and fitness of a measure, to obtain for it general approbation ; and daily experience illustrates the words of the immortal Washington, that the American people want only an opportunity, to be the most enlightened, liberal and happy people on the face of the globe. From the time of the declaration of independence, nay, *before* that period, the *outlines* of civil liberty had become familiar to every citizen ; but, as experience has shewn, we are still, in the structure and operation of many of our laws, far behind the wisdom of the age. The familiar use of many laws, and the convenience and apparent necessity of others, have caused them to be retained, notwithstanding they militate directly against the principles upon which we have founded our government. The study of the law has long been a study of forms, and experienced practitioners seem impressed with the opinion, that no alterations can be made for the better. Almost every change is denounced as an innovation upon a system so perfect in itself, that the change can only create a blemish, or mar its symetry. This propensity to continue old *customs*, will essentially impede the progress of liberal and consistent laws. For who is there that has the moral courage to propose, or the talent and experience to sustain any inroad upon established usages, while he finds himself opposed by the most learned and talented profession in the land. We do not say that all the able and enlightened jurists of our land have set their faces against the change of some of our laws ; on the contrary we shall, through the course of this investigation, bear ample testimony to the liberal and enlightened views of more than one of our distinguished lawyers.

Laws should be framed with a view to sustain, not the *customs* and *usages* of *olden times*, but the spirit and principles of constitutional liberty. We have declared ourselves free from the government of the old world, its *customs* and *laws*. We have adopted new and more correct principles, and it becomes us to practice upon our professions. Our aim in government is not *power*, but happiness. We are not so anxious to be reputed great, as happy. We know that government, at best, is but a necessary evil, and that a republican government should make the burden as light as the safety and well being of the community will admit. "Civil liberty is the not being restrained by any law but what conduces in a *greater* degree to the public welfare;" consequently, every law which authorises undue severity, every act which recognizes more power in the magistracy than the public welfare requires, is an infringement of civil liberty. The definition of civil liberty, says Paley, imports, that the laws of a free people impose no restraints upon the private will of the subject, which do not conduce in a *greater* degree to the *public happiness*; by which it is estimated, 1st. That restraint is itself an evil: 2d. That this evil ought to be overbalanced by some *public advantage*: 3d. That the proof of this advantage lies upon the Legislature: 4th. That a law being found to produce *no sensible good effects*, is a *sufficient reason* for repealing it.

In accordance with the definition of civil liberty, we shall consider this law in all its bearings: *First*, How far it militates against a republican form of government: *Second*. How far against the law of nature: *Third*. How it is necessary: *Fourth*. Of its use as an example: *Fifth*. Of the benefit of certainty over severity: *Sixth*. How far it is authorised by the laws of God: *Seventh*. How it resembles the *lex talionis*: and, *Eighth*. The irremediable nature of it.

By this division of the subject, it will be perceived that we do not propose to confine our examination to the abstract or theoretical right of a government over the lives of its citizens, but will also consider the expediency of exercising such right, if possessed.

We shall, in the order proposed, proceed to consider how far the exercise of the *power* to take away human life is consistent with a republican government; and, in doing so, we shall take frequent opportunities to introduce the language of the ablest and best men

of ancient and modern times, as authority to sustain our positions : not that there are no sufficient arguments for our purpose without such reference, but because we find ourselves doubly fortified in our opinions, when we can produce testimony so high and so commanding.

Governments differ as essentially in their operation as in their construction. Monarchial governments, dependent on the will of an individual, are more cruel and vindictive than those which originate with, and are sustained by the people. One has its origin in force or fraud, and the other in common consent. One is sustained by cruelty and terror, the other by lenity and virtue. The object of good government is to protect its citizens. All laws therefore, should be made to *prevent* rather than to *punish* offences. No laws can be *just* that are in their operation vindictive or cruel.

The severity of punishments, says Montesque, is fitter for a *despotic* government, whose *principle* is *terror*, than for a republic whose spring is *honor* and *virtue*. In moderate governments, the love of country, *shame* and *fear of blame*, are restraining motives, and the greatest punishment for a bad action is conviction. A good legislator is less bent upon *punishing* than *preventing* crime ; he is more attentive to inspire good morals than to inflict punishment. It would be an easy matter to prove that in all, or nearly all the governments of Europe, punishment has increased or diminished in proportion as those governments favored or discouraged liberty. The Marquis Beccaria, in remarking on this subject, says, “ a wise legislator will endeavor to restrain people’s minds by maxims of philosophy, morality, and religion, adapted to their character, and not by punishments *unnatural* and *cruel*. Experience has shewn that in countries remarkable for the *lenity* of penal laws, the spirit of the inhabitants is as much affected by them, as in other countries, by severe punishments. Let us follow nature, who has given *shame* to man for his *scourge*, and let the heaviest part of the punishment be the infamy attending it. But if, says he, there be some countries where shame is not a consequence of punishment, this *must* be owing to *tyranny*, which has inflicted the same punishment on villains and honest men ; and if there are others where men are deterred only by cruel punishments, we may be sure that this must in a great measure arise from the violence of the government.



“ I am strongly confirmed in my sentiments,” says Montesque, “ upon finding the Romans on my side ; and I think that punishments are connected with the nature of the government, when I behold this great people changing in this respect, their civil laws, in proportion as they altered their form of government.” The *regal* laws made for a multitude were *very severe*, but after the expulsion of the decemvirs, almost all the penal laws were abolished. This is exactly the time to which we may refer, what Livy said of the Romans, “ that no people were ever more fond of moderation in punishments.” And Cicero, in one of his celebrated orations, makes these remarks : “ Far, far from us, be the punishment of death, its ministers, its instruments. Remove them not only from their actual operation on our bodies, but banish them from our eyes, our ears, our thoughts ; for not only the execution, but the apprehension, the existence of these things, is disgraceful to a *freeman*, and a Roman citizen.”

The conclusion to which we are brought by authority, entirely sustains our position, that the enforcement of laws which are *vindictive* or cruel, is contrary to the spirit of civil liberty, and a violation of republican principles.

“ The virtues,” says Dr. Franklin, “ are all parts of a circle ; whatever is humane, is wise ; whatever is wise, is just ; and whatever is wise, just, and humane, will be found to be the true interest of states, whether criminals or foreign enemies be the subject of their legislation.”

Having considered how far cruel and vindictive punishments militate against the spirit of a republican government, we come next in order to examine into the derivation of *right* on the part of Legislatures to enact laws which authorize the taking of human life.

In order to ascertain the *rights* which are possessed by a government, we shall have to inquire what rights appertain to individuals in a state of nature, for it will not be controverted at this period of time, that a government can only possess such rights as were possessed by the constituent members of society, before the formation of governments.

From a long habit of submitting to the exercise of licentious power, and a disposition to yield to the supreme authority, we act without reference to *right*, and surrender our judgments to custom.

There are times, however, when it becomes necessary to refer to first principles, and inquire into the origin of power—when we are justified in looking at the originating principles of government, and tracing their effect through the political system.

Man, in a state of nature, is possessed of every inherent right which can be exercised by himself, and of course of every right that he can delegate to a government. And, as government is the result of a delegation of individual rights, no rights or powers can be properly exercised by government, unless they *could* have been exercised by an individual in a state of nature. We now arrive at the question, has man the right to take his own life? It will readily be perceived that the answer to this question is all important to the determination of this inquiry; for if it should appear that he does not possess it, then it will necessarily follow that he cannot by possibility, delegate that right to another. If one man has not the right, ten cannot have it, and if ten cannot, ten thousand cannot.

The multitude of parts do not change their essence; it is an axiom in philosophy, that the whole cannot possess a property which does not belong to the parts.

Suicide, in all countries, and at all times, both by the moral sense of the people and the laws of the land, has been considered a crime against nature and society; and even in those countries where human life is held so cheap as to be forfeited for trivial offences, suicide has been reprobated as the *foulest* crime. Indeed, it would be an easy matter to shew, that in the nature of things, man cannot possess the right to destroy his own life, but we prefer giving the opinion of the very authority which professes to exercise this right by delegated power. An English writer, of much celebrity, in treating on the subject of homicide, uses the following language: “The laws of England *wisely* and *religiously* consider that no man hath a power to *destroy life*, but by *commission of God, the author of it*.” This is direct authority. The English jurist declares “that no man can have the right of destroying human life, but by commission of God; not in consequence of human authority, but *immediately* from God; and, says he, as the suicide is guilty of offence by *evading* the *prerogative* of the Almighty, and rushing into his immediate presence uncalled for, the *law* has ranked it among the *highest crimes*, making it a peculiar species of felony, and holding him to be *guilty of murder*, who advises a suicide to destroy himself.” The punishment does not

stop here ; the grave itself must be made in the highway, and a stake drove through the body as a mark of the high and unqualified condemnatory sentence which the law decrees against this species of crime ; and by the Athenian law, the hand which committed the desperate deed is ordered to be cut off, and nailed against the wall, as a warning to all who may be inclined to perpetrate so wicked an act.

We want no further authority to show in what estimation the right over human life is held in law, an opinion of its sacred character, of its inviolability is expressed in terms not to be mistaken, and suicide is denounced as a most desperate and wicked act, not *mala prohibita* but *mala in se*, such an one as no christian man would commit, and even the *advising* to it is held to be murder. So charitable are the great mass of mankind, in relation to this offence, that they deem every one, who can be guilty of so unnatural a crime, laboring under an aberration of mind. There are few, says Sir Matthew Hale, who commit this offence, but are under the infirmities of melancholy or hypochondriacal distemper, or are madmen, frantic and destitute of the use of reason. Thus we perceive government, by its declaration and acts, denies to individual man the right over his own life. From whence then, we would ask, has government derived it? If, then, government exercise the right to take human life under a *delegated* power, it is clearly evident, under the construction put upon suicide by government, that it must have been obtained from the people while laboring under a derangement of intellect or under a *misconstruction* of authority.

We will repeat that if it is *wrong* in a state of nature, or *morally* wrong at any time in an individual to destroy his own life, it must be equally wrong for him to authorize any one else to do it. If he can not authorize one individual to do so foul a deed, neither can he authorize ten thousand individuals. We again ask, if man does not possess the right, how can he delegate it? We think the conclusion irresistible, from the foregoing, that government does not possess the right over the lives of its citizens by *delegation*; and if it does not possess it by *delegation*, then we appeal to *republican principles* to prove that it is an *unwarrantable* exercise of power.

The next question which we have to consider, naturally follows the one which has preceded it, for if it shall appear that a *necessity* exists for inflicting capital punishments, the right will of *necessity* be yielded.

It has been said, and with much truth, that the plea of necessity is the reason of tyrants, and all experience has shown, that the most horrid crimes have been committed and the grossest outrages inflicted, upon the mere pretence that precaution and prudence *necessarily* demanded it. In considering the question of *necessity*, we are naturally led to inquire into its origin, or the right pre-existing, which man may possess to take the life of his fellow under the plea of necessity. Self preservation is not only a man's right, but his duty. He is, as we have shown, bound to protect that life which his creator has given him in charge, and for which he is responsible. To protect himself is the first law of nature; it is instilled into his being, and is connected with his existence. It may with propriety be called an instinctive action, which propels him to do, without the aid of reflection or reason, whatever is for the preservation and promotion of life.

"Nature," says Vattel, "has given man a right to use force, when it is necessary for his defence, and the preservation of his rights, and this principle is generally acknowledged; reason demonstrates it, and nature herself has engraven it on the heart. Most men will naturally defend themselves and their possessions: *happy if they were as well instructed to keep within the just limits which nature has prescribed to a right granted only through necessity.*"

Governed by this *natural right*, the municipal laws of every country have permitted the sacrifice of life in cases where the *necessity* of the case appeared to require it, but beyond that they would not go. The necessity must also appear very apparent; the English law, as well as our own, having provided that when an attack is carried beyond what the law of self-preservation requires, it is a trespass upon the law of nature, and consequently obnoxious to punishment by the authority which is offended. The party assaulted must flee as far as he conveniently can, or as far as the fierceness of the assault will permit him, and then, in his defence he may kill his assailant. And this, says Puffendorf, is the doctrine of *universal justice*, as well as of the municipal law.

The right thus to take life, is founded in the very reason and nature of things, and naturally follows the right of self-defence. Every right is in itself perfect. If it be the right of one individual to preserve his life by force, it is necessarily the right of another. If it be the right of both individuals so to preserve their lives against

the assault of the other, then it necessarily follows, that the one who passes the line of self-defence, and becomes an assailant, violates the natural right of the other, and is an aggressor. Hence natural rights authorise such acts *only*, as have an *immediate* tendency in their nature to *prevent* an injury. They authorise no destruction to *deter*, no example to *terrify*, and no gratification of vindictive feelings. The right of self-defence being the right of every individual, every person must possess it equally ; and if we admit for a moment that any person possesses the *right* to carry force beyond the resistance of aggression, we must perceive that we allow *might* to assume the place of *right*, and acknowledge what has so often been denied, that the natural state of man is *war*—a state of all others the most unnatural.

In a state of nature, then, man did not possess the right to take the life of his fellow, except in self-defence. Since nature, says a writer on the law of nations, has given to man the right of using force *only* when it becomes *necessary* for their defence and the preservation of their rights ; and since society is founded upon the delegation of certain natural rights, it necessarily follows, that society is *not* authorised to use force in *any case* where it would not have been right for an individual to have exercised it. The cause which a state may require to exercise the right of force, particularly when its consequences are fatal, should be governed by the same circumstances, and be deducible from the same facts, as those governing individuals in a state of nature. Government is the recipient, the guardian, the lawful protector of the *rights* of all its citizens, as well of those who have violated its laws, as of those who have observed them. Men by offending do not lose their *rights*, neither is it or can it be *necessary* to deprive any man of his rights for the purpose of doing justice to another.

The necessary conclusion to which we are drawn by the argument growing out of the right of self-defence, is, that neither an individual or society have the right to take human life unless all other *resources fail*. If then we can imagine a state of society so rude as to be unable to hold a dangerous member in confinement, or prevent him from doing violence to its members, we must concede the right, *through necessity*, to inflict capital punishment. But if, on the contrary, the power to confine, and by that means restrain, is to be found in the government, then we cannot for a moment concede, that the *necessity* which will justify the horrible *alternative*, exists.

"As soon as your enemy has laid down his arms," says the Law of Nations, "and surrendered his person, you have no farther right over his life. Therefore it was a dreadful error of antiquity, a most *unjust* and *savage* claim to *assume* a *right* of putting a prisoner of war to death, and even by the hand of the executioner." It is now a long time since more *just* and humane principles have taken place. Prisoners may be *secured*, and for this purpose *shut up*; and if there be *cause* to *fear* their rising or running away, they *may* be even fettered. "If," says Dr. Franklin, "society can be secure from violence by confining the murderer, so as to prevent a repetition of his crime, the end of extirpation will be answered."

It is not necessary for us to refer to authority on this subject; it comes home to the understanding of every individual. And so long as a government possesses the *means* to *hold in durance* all those who violate its laws, whether for great or minor offences, humanity, wisdom and *justice* demand that resort shall not be had to the destruction of human life, under a *plea* (which is always used to justify and uphold practices bad and tyrannical in themselves,) of *necessity*.

The next question, in the order assumed, presents for consideration the beneficial consequences flowing from capital punishment, as an *example*.

If any one persist in the belief that examples of human sufferings are of importance in preventing crimes, let him inquire how far it has had an influence over those within the range of his observation, either in relation to greater or lesser offences: let him inquire whether those who commit offences, expect to be detected and punished; and also, whether he has known, in any country, crime less frequent, because of the severity of punishment. The ablest writers on the law of nations and municipal law, while they do not controvert the right to frame laws which inflict the punishment of death, yet deny the necessity or efficiency of them. Blackstone says, that every humane legislator will be extremely cautious of establishing laws that inflict the penalty of death; he will expect a better reason for his so doing, than that loose one which generally is given, that it is found by former experience that no lighter penalty will be effectual; for, says he, "is it found, upon further experience, that capital punishments are more effectual?" Was the vast territory of all the Russias worse regulated under the late empress Elizabeth, than under her

more sanguinary predecessors? and was it under Catharine 2d less civilized, less social, less secure? And yet we are assured that neither of these illustrious princesses did, throughout their whole administration, inflict the penalty of death; and the latter, upon full persuasion of its being useless, *nay even pernicious*, gave orders to abolish it throughout her extensive dominions. Egypt, during the reign of Sabaco, and Tuscany for more than twenty years, abolished capital punishment. Also in Rome, for a period of two hundred and fifty years, (during this period Rome was in all her glory and in possession of her freedom,) and during the reign of the Grecian emperors, Maurice, Anastasius and Angelus, offences were not punished capitally: in all which periods of time, history assures us, that crimes decreased, and the supremacy of the law was sustained. The ancient Germans admitted of none but pecuniary punishment. These free and warlike people were of opinion that blood ought not to be spilt but with sword in hand.

If we inquire, says Vattel, into the causes of human corruptions, we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments. By the exacting of severe penalties the springs of government are weakened, the imagination grows accustomed to the severe, as well as to the milder punishments, and as the fear of the latter diminishes, they are soon obliged, in every case, to have recourse to the former. Robberies on the highway had grown common, in some countries. In order to remedy this evil they invented the punishment of breaking upon the wheel, the terror of which put a stop for a *while* to this mischievous practice. But soon after, robberies on the highway, were become as common as ever.

In Japan, says Kempler, almost *all* crimes are punished with death, and so far from being amended or deterred *thereby*, they are *hardened* by the continual sight of punishment; the consequence is, that they are now *obliged* to have recourse to the most horrid severity. As we have said, for more than twenty years neither murder or any other crime was punished with death in Tuscany, and we have not only the authority of the sovereign that crimes had become very rare, but we are assured by the venerable Franklin that during that time only *five* murders were committed in Tuscany; while in Rome, where that punishment is inflicted with great pomp and parade, for the purpose of deterring by *example*, *sixty* murders were committed in the short space of *three months* in the city and its vi-



cinity, being in comparison as *one to nine hundred and sixty*. It is remarkable, he adds, that the manners, principles, and religion of the inhabitants of Tuscany and Rome, are exactly the same. The abolition of death *alone* as a punishment for murder, produced this difference in the moral character of the two nations.

The author of the Rights of Man, when speaking of the cause which produced the spilling of so much blood in the French revolution of '98, remarks, "Lay then the axe at the *root*, and teach government *humanity*. It is these *sanguinary* punishments which *corrupt* mankind. In England, the punishment in certain cases is *hanging, drawing and quartering*; the heart of the sufferer is cut out, and held up to the view of the populace. In France, under the former government, the punishments were not less barbarous. The effect of these cruel spectacles, exhibited to the populace, is to *destroy tenderness*, or excite revenge; and by the base and false idea of governing men by *terror*, instead of *reason*, they become precedent. It is over the lowest class of mankind that government by *terror* is intended to operate, and it is on them that it operates to the worst effect. Constant association with scenes of blood, makes us become so familiar with it, that we are more ready to imitate the example, than to be terrified by its effects."

Among a number of facts which we have collected on this branch of the subject, we cannot refrain from selecting one, which being authenticated by proof which cannot be denied, may bring the question more immediately home to every mind. In the year 1822, a person named John Lechler was executed at Lancaster in Pennsylvania, for an atrocious murder. The execution was, as usual, witnessed by an immense multitude; and of the salutary effect it had upon their feelings and morals, we may judge from the following extract from a newspaper printed in the neighborhood, (the Yorktown Gazette.) "It has long," says the judicious editor, "been a controverted point whether public executions, by the parade with which they are conducted, do not operate on the vicious part of the community more as incitements to, than examples deterring from, crime. What has taken place in Lancaster, would lead one to believe that the spectacle of a public execution produces less reformation than criminal propensity. While one offence was atoned for, more than a dozen new ones were committed, and some of a capital grade. Twenty-eight persons were committed to jail on Friday night, for divers offences, at Lancaster, such as *murder*, larceny, assault and battery, &c.; besides, many gentlemen lost their pocket-



books, where the pickpockets escaped, or the jail would have overflowed. In the evening, as one Thomas Burns, who was employed as a weaver in a factory near Lancaster, was going home, he was met by one Wilson, with whom he had some previous misunderstanding; when Wilson drew a knife, and gave him divers stabs in sundry places, which are considered mortal. Wilson was apprehended and committed to jail, and had the same irons put on him, which had scarcely been laid off long enough by Lechler to get cold." Wilson was one of the crowd who left his residence expressly to witness the execution, and he has since been convicted of the murder.

It is stated by Buxton, and well authenticated, that not long since, an Irishman, found guilty of issuing forged bank notes, was executed, and his body delivered to his family. While his widow was lamenting over the corpse, a young man came to her to purchase some forged notes; as soon as she knew his business, forgetting at once both her grief and the cause of it, she raised up the dead body of her husband, and pulled from under it a parcel of the very paper for the circulation of which he had forfeited his life. At that moment an alarm was given of the approach of the police, and not knowing where else to conceal the notes, she thrust them into the mouth of the corpse, and there the officers found them. On this part of the subject Mr. Livingston remarks, "I pray the advocates of this punishment to reflect on the examples produced. I ask them seriously to ponder on them; on the numerous other instances of a like nature that must occur to them, and then say, whether they can believe the punishment of death an efficient one for murder. The most serious and intense reflection, has brought my mind to the conclusion, not only that it fails in any impressive effect, but that it *promotes the crime.*"

Reasoning on this part of the subject, after such conclusive testimony must be useless, and were we left to this division of the question alone, we should conclude, that sufficient had been shown to induce the Legislature to abolish the punishment. We shall proceed however from the consideration of its utility as an *example* to the examination of the advantage of *certainity* over *severity* in punishment.

Experience and authority concur with reason to prove, that obedience to laws is more readily yielded, where the punishment is mild and certain, than where it is severe and doubtful.

The "glorious uncertainty of the law," has long been a theme for merriment among all classes of society, and we are inclined to believe that the cause may be attributed with much greater appearance of truth to the criminal than the civil tribunals. This arises in part from the *severity* of punishment. "The excessive severity of the laws," says Montague, "hinders their execution. Where the punishment passes all measure, the public will frequently out of humanity prefer impunity to it." Thus also the statute of Mary, 1 c. 1, recites in its preamble, that "the glory of every king consists more assuredly in the love of subject towards their prince, than in the *dread* of laws made with *rigorous* pains, and that laws made for the preservation of the Commonwealth, *without great penalties*, are more often *obeyed* and kept, than laws made with *extreme* punishments." "It is a *melancholy* truth," says Blackstone, "that among the variety of actions which men are daily liable to commit, no less than an *hundred and sixty* have been declared by act of parliament to be felonies *worthy of instant death*. So *dreadful* a list *instead of diminishing, increases* the number of offenders. The injured, through *compassion*, will often *forbear to prosecute*. Juries, through *compassion*, will sometimes forget their *oaths*, and either *acquit* the *guilty* or *mitigate* the nature of the offence; and judges, through compassion will *respite one half* of the convicts, and recommend them to the royal mercy. Among so many *chances* of escaping, the needy and hardened offender overlooks the multitude that suffer; he boldly engages in some desperate attempt to relieve his wants or supply his vices; and if unexpectedly, the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to those laws, which long *impunity* has taught him to *contemn*." "If we inquire," says Beccaria, "into the cause of all human corruption, we shall find that they proceed from the *impunity* of crimes, and not from the *moderation* of punishments."

"From the operation of the earlist written laws of which history give us any account," says Mr. Livingston, "down to the present day, it has been *invariably* observed by all who would take the trouble to think that the *inexecution* of penal laws was in exact *proportion* to their *severity*." Those of Draco have become proverbial for this last quality, and their cruelty has been generally supposed a sufficient reason for their abolition by Solon. But, the fact is, that they were abolished, not so much by Solon, as by the *impossibility* of carrying them into execution, where the stealing an apple incur-

red the penalty of death, what citizen would accuse, what witness would testify, what assembly of the people would convict, nay, what executioner would be found to present the poisonous cup? We are accordingly told expressly, that these laws were abolished, *not* by a formal decree, but by the *tacit* and *unrecorded* consent of the Athenians.

We make no quotations from modern writers on penal law to this point, for there is not one who has not given his testimony in *favor* of the position we have taken, and yet, by a most *singular incongruity*, each of them has a favorite crime to which he thinks capital punishment applicable. "The certainty of punishment," says Dr. Paley, "is of more consequence than the *severity*. Criminals do not so much flatter themselves with the *lenity* of the sentence, as with the hopes of escaping; they are not so apt to compare what they *gain* by the crime with what they may *suffer* from the punishment, as to encourage themselves with the chance of concealment or escape: for *which reason* a vigilant magistracy, an accurate police, a proper distribution of force and intelligence, together with due-rewards for the discovery and apprehension of malefactors, and an *undeviating* impartiality in carrying the laws into execution, contribute *more* to the *restraint* and *suppression* of crime, than any *violent exacerbation* of punishment." On this point authorities without number could be quoted, and we refrain from a further examination of the subject, because, we are impressed with the opinion that all agree that crime is more *certainly* prevented by *certainty* than by severity of punishment.

We have now examined, and we believe conclusively proved, both the want of *right* on the part of the Legislative authority to pass laws authorising capital punishments, and their total want of *efficiency* as an example: and here we should be willing to rest the case, were we not aware that there are individuals in this community who are ready at all times to put down reason and argument, on this subject, by the often repeated reference to biblical authority. It is the command of God, say they, and therefore, whether we consider it right or wrong, expedient or inexpedient, we are bound to put to death whosoever sheds man's blood. This authority, from having the representation of being of divine origin, has given, for many years, a sanction to capital punishment. It shall be our duty to examine it with care and candor.

A large class of this community declare that death ought to be punished with death, *because* we find it recorded in the Old Testament, as a command from God to Noah, "Whosoever sheds man's blood, by man shall his blood be shed." We say that they rest upon this, because we cannot conceive that they place any reliance to support their position upon the laws of the Jews. The laws given to the Jews were made expressly for that people, confined in their operation to them, and the *necessity* of their observance limited to their information. On this subject Sir Matthew Hale, whose piety was exemplary, remarks: "Although offences against human society be many of them *prohibited* by the laws of God and nature, yet the *punishment* of all such offences is not determined by the law of nature to this or that particular kind, but are, for the most part, *if not altogether*, left to the positive laws and constitutions of the several kingdoms and states. And, therefore, although most certainly, the penalties instituted by God himself among his ancient people, upon the breach of *their* laws, were with the highest wisdom fitted to *that* state; and although all laws and instituted punishments should come up as near to that pattern as may be, yet, as to the degree and kind of punishment of offences, *they are not* obliging to all *other kingdoms or states*, but *all states*, as well *Christian* as *heathen*, have varied from them."

Those who would require the Jewish laws in this particular to be continued and enforced, *because* they were given by God to that people, must, to be consistent, desire to see enforced the whole of the Levitical law. If the whole of the Levitical law except *this* can be dispensed with without disobeying the laws of God, then why can we not, without trespassing upon the province of our Maker, enact any law in the place of this, that we may think proper and expedient?

This reasoning seems to be conclusive, so far as the Jewish law is concerned, and must make the absurdity of the position so frequently assumed appear the more glaring, when we find the advocates of this law *opposed* to every other law found in the book of Leviticus. But it has been urged, and with much more plausibility, that the first command, "Whosoever sheds man's blood, by man shall his blood be shed," was given to Noah, from whom *all* men are derived, and is not therefore peculiar to the Israelites. This puts the question in another point of view, and will require from us a short examination.

“I hope I shall not offend any one,” says the Rev. W. Turner, in commenting on this text, “by taking the liberty to put my own construction on this celebrated passage, and inquire why it should be deemed a *precept* at all. To me, I must confess, it appears to contain nothing more than a declaration of what will generally happen; and in this view, to stand exactly on the same ground with such passages as the following: ‘He that leadeth into *captivity* shall go into captivity.’ ‘He that *taketh* up the sword shall *fall* by the sword.’ The form of expression is the same in both texts; why, then, may they not all be interpreted in the same manner, and considered, not as commands, but as denunciations. And if so, the magistrate will no more be bound by the text in Genesis, to punish murder with *death*, than he will by the text in the Revelation, to sell every *Guinea captain* to our West-India planters.”

“I suspect the attachment to death as a punishment for murder,” says Dr. Franklin, “in minds otherwise enlightened on the subject of capital punishment, arises from a false interpretation of a passage in the Old Testament. And that is, ‘He that sheds the blood of man by man shall his blood be shed.’ This has been supposed to imply that blood could be only expiated by blood. But I am disposed to believe, with a late commentator on this text of scripture, that it is rather a prediction than a law. The language of it is, simply, that such is the folly and depravity of man, that murder in every age shall beget murder.”

And the celebrated Dr. Adam Clark, in his commentaries on the words of Christ, “He that taketh up the sword shall perish by the sword,” says, that the general meaning of the verse is, they who contend in battle are *likely*, on both sides, to become the sacrifice of their mutual animosities.

Indeed, if we are to consider the text referred to as a *positive* law, and one that must be enforced at all hazards, how can we view the case of Cain. He certainly was a shedder of man’s blood, and that in the most aggravated and depraved manner; but we do not find that the Almighty took blood for blood: and yet the blood of Abel is said to have cried to him from the ground. But, on the other hand, he does not even mention the penalty of death as due to the crime, but pronounces a curse upon him, which Cain declares will cause every one who shall find him to slay him. Does the *Almighty* allow this to be the case? Does he give his life into the hand of his fellow? Does he command all those who are disposed to

*fulfil his will*, and obey his commandments, to inflict the penalty of death upon a most wanton, ruthless and abandoned murderer? Are any of these requirements made? So far from it, that He who is the sole arbiter of human existence, He who is charged with having *commanded* us to kill, not only does not make this command, but for the sure protection of the *life* of the murderer, set his mark upon him, lest any one finding him should slay him, and declared that whosoever slew Cain, vengeance should be taken on him *seven-fold*.

The Almighty, in this instance, at least, has not given a very strong evidence in favor of the *usual* interpretation of this passage of scripture. But if we may be permitted to take it as a practical illustration of the text, we should feel justified in saying, that it fully bears out the construction given to it by the authorities we have quoted, to wit: that it simply means to declare, that murder will beget murder, and that the exclamation of Cain, that "every one that findeth me shall slay me," is an illustration of the tendency of human passions to return injury for injury, blood for blood. But the interference of the Almighty is an equal illustration of the attributes of the Deity, in opposition to the impulses of human nature. The arm of mercy is at once extended; the immortal ægis is sent before him as a protection against the avenger of blood; and the voice of the Eternal is constantly proclaiming, *vengeance is mine*, I am the creator and preserver of all things; in *my* right hand are the issues of life and death.

The believers in the command thus given, must, by the foregoing, be satisfied, that so far from it being the will of the deity, that he has declared, both by precept and example, "*thou shalt not kill*." But what shall we say to the believers in the christian dispensation; shall we be required to prove that old things are done away, and that all things have become new; that the law of an eye for an eye, injury for injury, has given place to the doctrines of charity, long suffering, and the returning of good for evil? Shall we be called upon to show that violence was not a part of the religion established by Christ, and that he came to introduce the doctrines of pardon and forgiveness? The followers of Christ, of all other men, have the least pretext to sustain this law; not a portion of their creed can be found, which does not directly militate against it; not an action of their great leader which does not inculcate doctrines utterly at war with the idea of capital punishment. And we are warranted in saying that whether we look to the laws of nations, as

exemplified in the principle of self-preservation, or to the laws of God, as declared by the old and new testament, we are equally admonished to "do unto others as we would wish that others should do unto us."

"Laws," says Dr. Franklin, "which inflict death for murder, are in my opinion, as *unchristian* as those which justify or tolerate revenge; for the obligation of christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, are equally binding upon States."

The law punishing murder with death, is in all its essential features, a law of *retaliation*, and this brings us to the consideration of the next subdivision of this subject.

Blood for blood is the doctrine of capital punishment, and yet we have it constantly asserted that it is not the object sought by the law. Blackstone says, "that the end or final cause of human punishment, is not by way of *atonement* or *expiation* for the crime committed, for that must be *left* to the *just determination* of the supreme being." The law of retaliation then by *name* is denounced, and has been repeatedly condemned by the law givers of almost every nation, on the ground assumed by the English jurist, that punishment is not intended as an act of retributive justice on the individual, but as a *prevention* of future offences of the same kind.

The laws of most countries denounce the *lex talionis*, or law of retaliation, as impolitic and unjust, and scarcely a law-giver since the christian era has been found, hardy enough to establish it. It may be found in the Koran, but even there, it does not extend to all cases. In England, a statute was passed in the 37th year of Edward 3d, enacting, "that such as preferred suggestion to the king's great council, should be put to surities of taliation." But, after one year's experience, this punishment of taliation was rejected, and imprisonment adopted in its stead.

Beccaria, and several other writers of distinction, have contended that the punishment due to the crime of which one falsely accuses another, should be inflicted on the perjured informer.

The law of the twelve tables of Rome, never condemned to retaliation, but when the injured party could not be satisfied in any other manner. And we may remark, that retaliation is only another



name for revenge. It is taking vengeance on the author of any offence, not for the benefit of the public, but for the gratification of the vindictive feelings of our nature, the return of insult for insult, injury for injury. How much soever some individuals may boast of their spirit in resenting an affront, very few will be found to advocate a law authorizing a citizen to seek revenge, for a real or supposed injury.

The object, says Sir Matthew Hale, in punishing offences, is not to gratify a spirit of *revenge*, for that would be *perverting the current of justice*. If we examined ourselves, if we inquire into the reason which induces us so readily to justify the destruction of human life by the operation of law, if we make ourselves sensible of the cause that leads us to applaud the execution of a law attended with such fatal and horrid consequences, we shall find that the spirit of the old repudiated law of retribution, the feeling of revenge, the desire to see the same punishment inflicted that the culprit has been the cause of inflicting upon another, lies at the bottom of our desire to sustain this law. Let every one examine himself, let him inquire whether his whole reasoning on the subject will not result in this, "*he is guilty, he ought to be punished.*" Few persons can be found who will separate the *object* of punishment, from the feeling inherent in our nature of the propriety of inflicting an injury, because an injury has been inflicted. In fine, this law of capital punishment is sustained by, although it may not have originated in, the *lex talionis*. We call then upon the advocates of this law to say, whether they are willing to restore the old law of retaliation—"an eye for an eye, and a tooth for a tooth"—whether they are disposed to return to a state of nature, and inflict punishment for the gratification of the worst and most vindictive feelings; or whether they would have government to be, what it is intended, a guardian, a protector, like a kind and affectionate parent, chastising the disobedient child for its benefit, and seeking its reformation for its sake, and the good of those who are necessarily associated with it?

Another objection has been urged to capital punishment, which deserves at this time particular attention; it is the *irremediable nature of it*. While men continue fallible, whilst human nature is liable to error, the depravity and presumption of the human heart must continue conspicuous, in acts which admit of no reparation. Can any thing short of absolute certainty, justify conviction, where the punishment is death? and can you arrive at that given point, under the organization of human nature?



The laws of England have placed around the judicial investigation of capital offences, every barrier to the introduction of falsehood that the humanity of legislatures and the wisdom of judges could devise. From the arrest of the offender, to the final expiation of his crime, the law has extended to him every indulgence that the most scrupulous philanthropist could demand ; and it has become a standing rule with those whose business it is to see the laws properly administered, to instruct the jury, that if upon examination they entertain a reasonable doubt of the guilt of the accused, that they must bring in a verdict favorable to the prisoner ; usually arguing as a reason, that it is better that nine guilty persons escape, than that one innocent one should suffer. Nor is this all ; even after the jury have found the accused guilty, and the judge has pronounced the sentence of the law, still, before the fatal time shall arrive, at any moment previous to the extinction of human life, if an error can be traced in the facts, or any misconception either of the judge or jury, the executive still may interpose the arm of authority, and arrest the execution of the sentence.

The law thus recognizes in every stage of the proceeding, the fallibility of human nature, its constant tendency to error ; and with the most scrupulous adherence to the immutable decrees of truth and justice, will never deny the possibility of error, even after the last act of the judicial authority has been executed. Strange, then, that with this acknowledgment pervading every step of the law-giver and law-expounder ; with this constant declaration on their lips, to "err is human," they conclude with an act which gives the lie to all their former actions and profession, and assume the province of a "God that can not err." Do we urge this point too strongly ? Shall we suppose that there is a liability to error *only* up to the fatal moment, when pardon and reprieve are useless ; when the soul has winged its flight to other regions, and the body is committed to its mother earth ? Do we imagine that, because the bourne is past from whence no traveller returns, we have set the seal of justice and infallibility on the deed ? If experience did show the untruth of the position, we might still find some show of resistance to our argument, but there are such a multitude of facts, such a crowd of cases, that the greatest tyrant, the most incorrigible sceptic must yield the point. More than one hundred cases of execution can be shown, where the sufferer was afterwards proved to be innocent ; it will not, therefore, be necessary to relate particular instances, for scarcely a

member in this Hall, but can call to mind more than one instance of what we have related.

We can not, however, dismiss this part of our subject, without introducing the testimony of a man, whose learning and philanthropy have given him a standing that will ever make him dear to every American. We speak of Edward Livingston, a jurist and a statesman, whose name will always be mentioned with respect, and whose doctrines will be quoted as authority wherever the true principles of legal knowledge are regarded. "I have witnessed," says he, "more than one condemnation, under false constructions of laws, or perjured or mistaken testimony, sentences that would now be reversed, if the unfortunate sufferers were within the reach of mercy. I have seen, in the gloom and silence of the dungeon, the deep, concentrated expression of indignation, which contended with grief; have heard the earnest asseveration of innocence, made in tones which no art could imitate; and listened with awe to the dreadful abjuration, poured forth by one of these victims, with an energy and solemnity that seemed super-human; summoning his false accusers, and his mistaken judge, to meet him before the throne of God. Such an appeal to the tribunal that never errs, and before which he who made it was in a few hours to appear, was calculated to create a belief of his innocence; that belief was changed into *certainly*. The perjury of the witness was discovered, and he fled from the infamy which awaited him; but it was too late for any other effect than to add one more example to the *many* that preceded it, of the danger, and I may add impiety, of using the attribute of the divine power, without the infallibility that can alone properly direct it. This is no picture of the imagination; would to God it were. Would to God that if death must be inflicted, some sure means might be discovered to make it fall upon the guilty. These things have happened; these legal murders have been committed, and they must be repeated. The same causes will produce the same effects. The innocent have suffered the death of the guilty—the innocent will suffer—we know it. The horrible truth stares us in the face; we dare not deny it, and cannot evade it. Who authorised a punishment which once inflicted could never be remitted to the innocent? Who tied the cord, or let fall the axe upon the guiltless head? Not the executioner, the vile instrument who is hired to do the work of death; not the jury who convict, or the judge who condemns; but the Legislature who made the law; those who, having the power, did not

**repeal it. These are the persons responsible to their country, their consciences and their God."**

**The committee having thus examined every question which appeared to call for investigation, and having shown that the right or expediency for continuing the law authorising capital punishment within this State is not to be found, most respectfully ask leave, in accordance with their sentiments, to introduce a bill.**



**No. 188.**

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**IN ASSEMBLY,**

**March 7, 1832**

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**REPORT**

**Of the Canal Board, upon the reference to the said Board of the memorials of Jacob Trumbour and Holmes Hutchinson.**

The Canal Board, to which was referred, by the Hon. the Assembly, the memorials of Jacob Trumbour and Holmes Hutchinson, respectfully submit the following

**REPORT :**

Jacob Trumbour sets forth in his memorial, that in the winter of 1828 he submitted to the Canal Commissioners a specific proposition for surveying the Erie, Champlain, Oswego, and Cayuga and Seneca canals, in conformity to the provisions of chapter 9, title 9, article 1, and sections 4 and 5 of the Revised Statutes, for the sum of \$5,000, being the sum appropriated for this purpose; that in the winter of 1829, he was informed by the Canal Commissioners that they had accepted a proposition from Holmes Hutchinson to perform the above service for the sum of \$4,000; conditioned for the payment of such further sum as he might necessarily expend, and not exceeding the sum of \$5,000. Mr. Trumbour complains that the Canal Commissioners refused to receive from him a second proposition, on the ground that he had been made acquainted with the terms offered by Mr. Hutchinson. The petition of Mr. Trumbour contains a correspondence between himself and Mr. Seymour on the subject of the aforesaid survey, and also an agreement between Mr. Hutchinson and himself, in relation to a division of the canals for that purpose.

Mr. Trumbour states, that "in May, 1829, on his way from Kingston to commence the survey of the canals, he consulted with the Surveyor-General on the plan of survey to be adopted, and has, throughout, conducted his operations in accordance with the opinions which he and the Surveyor-General at that time reciprocally entertained."

He gives a relation of the transactions between himself, Mr. Seymour and Mr. Hutchinson, on the subject of the aforesaid survey, and remarks, that "in the winter of 1830, conformable to the suggestions of Mr. Seymour, he and Mr. Hutchinson submitted the plans of their respective surveys to the Canal Board for the purpose of obtaining an expression of its opinion;" and that "after the parties had been heard, the Canal Board referred the subject to the Surveyor-General to report thereon, which he verbally did, shortly after, in substance as follows: That he had examined the plans of the two surveys, and that the survey of the petitioner was decidedly the best, and the one most proper to be adopted, and that they must have just such a written description of the boundaries on both sides of the canal as had been presented by the petitioner; and that the Surveyor-General, after stating that he did not feel disposed to subject either of the parties to the additional expense of a re-survey, to conform to the other, moved that each of the parties should be allowed to make an atlas of their respective surveys, which motion prevailed."

The remarks of Mr. Trumbour, in relation to the proceedings of the Canal Board, are entirely gratuitous, and in every material respect incorrect. The members of the Canal Board met informally in the winter of 1830, and at the request of Mr. Seymour, consented to hear the representations of Mr. Trumbour and Mr. Hutchinson, in relation to their respective plans for surveying and mapping the State canals, and examined rough drafts and sketches which were submitted; but they did not as a Board express any opinion, take any vote, or give any directions in relation to this matter. By referring to the statute authorising the survey, it will be seen that this subject is not properly before the Canal Board, until the Canal Commissioners shall have compiled the maps and field notes and submitted them for their approval.

Mr. Trumbour is mistaken in saying that the motion of the Surveyor-General, "that each of the parties should be allowed to make

an atlas of their respective surveys, prevailed." This could not have been so for another reason. Nearly every member of the Board, then as well as now, entertain the opinion that the survey and maps should in all respects be uniform.

The Surveyor-General did not report to the Board "that he had examined the plans of the two surveys, and that the survey of Mr. Trumpbour was decidedly the best, and the one most proper to be adopted;" but suggested the propriety of adopting both plans, and permitting each of the parties to make an atlas of their respective surveys, if this course should be satisfactory to the Canal Commissioners. It is true that Mr. Trumpbour, as stated by him, submitted to the Surveyor-General the plan on which he proposed to make his survey and maps, and that the Surveyor-General, under the impression received from him, that he was left to his own judgment, independent of a control from others, or instructions in this matter, did express his opinion that the proposed plan would be satisfactory; not having been informed of any other plan having been proposed, nor of any of the previous arrangements by the Canal Commissioners, as to the manner in which the surveys should be executed.

Mr. Trumpbour has no reasonable cause for complaint that the Canal Commissioners refused to receive his second proposition, after the terms of Mr. Hutchinson's proposition were made known to him.

It will be readily seen that if Mr. Trumpbour had been permitted to make a second proposition, Mr. Hutchinson might, with the same propriety have insisted on making his second proposition, and thus each would have modified or altered his proposition so as to bring his offer within the terms offered by his competitor. This course could not have led to a satisfactory result, would have been unjust, and is contrary to all established usage on such subjects. The Canal Commissioners, in the opinion of the Canal Board, were entirely correct in refusing to receive a second proposition from Mr. Trumpbour; and having done so, it was their duty to consider Mr. Hutchinson as the contractor. Mr. Trumpbour seems to have regarded the letter of Mr. Seymour, bearing date the 7th April, 1829, and his written agreement with Mr. Hutchinson, bearing date the 13th April, 1829, as a contract with the Canal Commissioners, and as authority for him to commence the survey. He should not so have construed this part of the transaction; and although he had a right

to infer a willingness on the part of Mr. Seymour to enter into a written contract, yet he was wrong in supposing that his contract with the Canal Commissioners was consummated. It is very evident that Mr. Seymour did not so consider it, because as early as in the month of August, 1829, and upon Mr. Trumbour's asking for an advance of money, he was apprised by Mr. Seymour of the necessity of a written contract, before any advances would be made to him.

The survey of the canals, as contemplated by the statute, was principally designed for the purpose of designating distinctly the bounds of lands appropriated or purchased for the use of the canals. It is a matter of great importance that it should be made with great accuracy, "and in so correct and perspicuous a manner as to afford a very perfect map of the survey ; and the whole so arranged that any one at all conversant with measurements could readily, and with the greatest practicable degree of precision, determine the position of any line or station, by a simple and easy reference to the nearest permanent object."

Mr. Hutchinson has completed the survey of the Champlain canal, and deposited in the Canal Room his field book and maps. The Canal Board have examined these field books and maps, and entertain the opinion that the plan which has been adopted will answer the requirements of the statute. They also believe that it furnishes admirable facilities to ascertain with precision the bounds of the lands purchased or appropriated for the canals, and that it is in all respects preferable to the plan pursued by Mr. Trumbour.

The fourth section of part 1, chapter 9, title 9 and article first of the Revised Statutes, requires the Canal Commissioners to cause "a complete manuscript map and field notes of every canal that now is, or hereafter shall be completed, and of all the lands belonging to the State, adjacent thereto or connected therewith, shall be made, on which the boundaries of every parcel of such lands to which the State shall have a separate title, shall be designated, and the names of the former owners, and the date of each title be entered." Conveyances with descriptive boundaries have been taken for all the lands purchased for the State. In every instance where the owner of lands has refused to convey the necessary land on which to erect lock houses and other edifices, the Canal Commissioners entered upon, and appropriated the necessary quantity of land for the pur-



pose of erecting such edifices; whenever this has occurred, the lands thus appropriated formed a part of the claimants charge for damages, and was adjusted in the same manner as claims for lands occupied by the canal. Releases were originally granted in a few instances, but they contained no descriptive boundary, and conveyed such land as was necessary for the construction of the canals. The statute required the Canal Appraisers to give "an apt description" of all the lands on which damages were assessed. This provision of the statute it is believed the Canal Appraisers have complied with, but the description here referred to, could furnish no aid in making the survey of the canals contemplated by the provisions of the Revised Statutes.

By the preceding statement it will be seen that there is no record or public document (except the deeds which have been taken) which designates, or describes the bounds of the lands appropriated or purchased for the canals, and it was no doubt for the purpose of obviating the difficulty which might grow out of this state of things that a survey of the canals has been directed. The object to be accomplished by this survey could not have been to acquire title or to make additional appropriations of land for the State; but to provide evidence of the title already in the State, by designating the boundaries of the lands actually appropriated by the Canal Commissioners in the construction of the canals.

Mr. Trumpbour states in his memorial, that "the statute before recited, proceeds on the ground that the State has a separate title to the land to be surveyed and designated on the maps; and as it is presumed the compilation of the map cannot vest any such title, it is obvious that its completion, in the present condition of the evidence of the title of the State, instead of establishing land marks and settling controversies, will only be a new and prolific source of future litigation."

By the preceding extract it would seem that Mr. Trumpbour entertained the opinion that "instead of establishing land marks, and settling controversies," the survey and compilation of maps would "only be a new and prolific source of future litigation." At what period of the survey Mr. Trumpbour discovered the impracticability of accomplishing the objects of the Revised Statutes in reference to a survey of the canals, the Canal Board are not informed; but it is reasonable to infer that it was in the early stages of it; and whether

Mr. Trumbour was governed by a sense of public duty, or a desire to obtain the public money, in pressing forward with his survey under such circumstances and entertaining such opinions, even after he had been directed by the Canal Commissioners to desist, is left for him to explain.

In reference to the allegations of Mr. Trumbour in relation to his transactions with the Canal Commissioners, and with Mr. Seymour and Mr. Hutchinson, we beg leave to refer the Legislature to a communication signed by the Canal Commissioners, and addressed to John W. Edmonds, Esq. chairman of the committee on canals, under date of the 8th of April, 1831, herewith submitted, (A.) and to the memorial of Holmes Hutchinson, dated February 27, 1832, a copy of which is hereunto annexed, (B.)

All which is respectfully submitted,

W. C. BOUCK,  
SILAS WRIGHT, JR.  
A. C. FLAGG,  
S. YOUNG,  
JONAS EARLL, JR.  
A. KEYSER,  
SIMEON DE WITT.

March 6, 1832.

## DOCUMENTS.

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( A. )

*Letter from the Board of Canal Commissioners to the Chairman  
of the Committee on Canals and Internal Improvements.*

*Albany, April 8th, 1831.*

SIR :

The Canal Commissioners, in answer to your letter requesting information in relation to the subject matter of the memorial of Jacob Trumbour, beg leave to state, that the memorialist did express his desire to undertake the survey of the canals, as he has represented; and that he was requested to make propositions for the performance of the work, is probably true; but that they, or either of them, ever gave him such instructions in regard to the terms and conditions of his proposal, as were calculated to mislead him in the manner his memorial appears to indicate, they believe to be entirely untrue.

This intimation is to us an entire new ground of complaint. By reference to his letter of the 28th of March, 1829, it will be seen that he claimed a right to make a second proposal, because, as he says, he had given one for a specific amount, "in consequence of a received impression that no other could be received for the undertaking by the Commissioners." At the time, when his recollection must have been more perfect than it is now, he did not pretend that we had prescribed the terms or conditions upon which we would receive his proposal, or that his "received impression" was derived from us. And two of the undersigned distinctly remember, that before, or at the time he made his proposal, he said he did not want, and would not take, a contract for the survey for any thing less than the full sum appropriated; a fact which is not reconcilable with his alleged application for terms and conditions.

It was not the intention of the Commissioners to make a vendue of this contract; they did not think such a course consistent with their duty and the object they had to accomplish. They wished to employ the most competent man for this service, and at the same time to have that service performed for a reasonable compensation. And it was with a view to these two objects that they requested the applicants to submit propositions for the consideration of the Board. Mr. Hutchinson had been long employed upon the canal, was well acquainted with their works and appurtenances, and was as competent to make the survey, and ascertain correctly the boundaries of all the public works, as any other person whatever; and his terms were more favorable than those of Mr. Trumbour, who, to our

knowledge, had never been employed on works of this kind. For these reasons, the contract was given to Mr. Hutchinson.

The present difficulty with the memorialist has arisen from a disagreement between him and the former gentleman. After Mr. Trumpbour's second proposition had been rejected, he was desirous that the survey should be divided, and that he should be permitted to take one half of it without the consent of Mr. Hutchinson. This proposition was unanimously rejected as unjust, as the contract had been given to Mr. Hutchinson; but the two acting Commissioners, with a desire to gratify the memorialist, agreed to such a division, provided Mr. Hutchinson could be induced to relinquish a share of his contract, and would agree with Mr. Trumpbour upon a uniform plan of executing the work. It was with this understanding, and with the further condition that the maps should be made on a uniform plan at Utica, under his immediate direction, that Mr. Hutchinson consented, on the request of the acting Commissioners, to allow Mr. Trumpbour to take one half of the contract. And although Mr. Seymour's letter of introduction by Mr. Hutchinson, which the memorialist has embraced in his communication, does not in terms express these conditions, yet it was well known to Mr. Trumpbour, as well as to Mr. Hutchinson, that the Canal Commissioners would never ratify any agreement between them, without security being first had that they should adopt and pursue a uniform plan of making their surveys, maps and descriptions. Mr. Hutchinson says that at the time he agreed with Mr. Trumpbour to divide the survey, these conditions were fully discussed, understood and agreed upon. But the memorialist, after he had received the paper signed by himself and Mr. Hutchinson, which indicated only the division of the work and the compensation to each party, appears to have supposed himself exonerated from the conditions above referred to; and Mr. Seymour had early intimations, that in making his surveys and descriptions he was not conforming to any plan adopted with Mr. Hutchinson, and that difficulty was to be apprehended on this account. And it was for this cause, that Mr. Seymour declined paying him any money, except such as he took a promissory note for, or to execute any contract with him until the business was better understood. He did not think it proper to recognize Mr. Trumpbour as a contractor, or to exonerate Mr. Hutchinson from his obligation to perform the whole survey, until every apprehended difficulty was removed.

Mr. Trumpbour says, in pages 4 and 5 of his memorial, that he conducted his operations in the survey, throughout, in accordance with the opinions which he and the Surveyor-General reciprocally entertained: thus avowedly disregarding the conditions upon which he was allowed to engage in the work. For however desirable it may have been to have concurred in opinion with that gentleman, and however proper it might have been to have taken that opinion in order to effect an agreement with Mr. Hutchinson on the adoption of a uniform plan of operations, the adoption of this or any other person's opinion, without consultation with, or reference to, Mr. Hutchinson's views of the matter, was a violation of his agreement with Mr. Hutchinson, and an entire disregard of the understanding with the Commissioners.

The memorialist has with great assurance condemned Mr. Hutchinson's plan of surveying and describing the canals. His plan, as well as Mr. Trumpbour's, was submitted to the consideration of the Canal Board in the winter of 1829 and '30, and although there was no distinct opinion expressed by the Board, it is believed that a majority of that body gave a preference to the plan adopted by Mr. Hutchinson.

The Commissioners have been anxious for a long time to adjust this controversy, and have made every effort for that purpose which they thought consistent with the interest of the State and the rights of the other parties. And Mr. Hutchinson, in the winter above mentioned, generously offered to be at one half of the expense of a re-survey of the work done by Mr. Trumpbour, in order to produce uniformity; but this has all been to no purpose; the memorialist has been stubborn and unreasonable, has been determined to force his services upon the State, and to do his work in his own way; and even after the written notice from one of our number, given with our entire concurrence, that he must discontinue his labors upon the public works. For the services which he performed before this notice, he has received from Mr. Hutchinson \$500, including the amount of the note taken by Mr. Seymour, which Mr. Hutchinson now holds, and intends to apply in his settlement with Mr. Trumpbour. With what propriety he can ask compensation for services not required, but expressly forbidden, we leave to the opinion of the committee and the decision of the Legislature.

HENRY SEYMOUR,  
WM. C. BOUCK,  
S. YOUNG.

J. W. EDMONDS, Esq.

*Chairman of committee on Canals, &c.*

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( B. )

*Memorial of Holmes Hutchinson.*

*To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened.*

The memorial of the undersigned respectfully sheweth:

That Jacob Trumpbour, of Kingston, in the county of Ulster, and State of New-York, has presented a memorial to your honorable body, which in many respects is not only calculated to mislead those to whom it is addressed, in regard to the true interest of the people of this State, but likewise to prejudice the minds of your honorable body, and those of the community generally, in relation to the manner in which your memorialist has discharged the duty assigned him by the Canal Commissioners in conducting the surveys of the canals of the State.

In consideration of which your memorialist, for the purpose of vindicating his rights, and fulfilling at the same time a duty which devolves upon every citizen, in respect to the regard which is due to the interest of the people of the State, offers for your consideration the following statement of facts, viz :

That in the winter of 1829 your memorialist made proposals to the Canal Commissioners in Albany for the execution of the surveys of the canals, as contemplated by a law of the Legislature, given in chapter 9, title 9, of the Revised Statutes, which proposals were accompanied by a statement of the propriety and importance of the surveys being executed by some one conversant with the business of engineering; and likewise, that your memorialist was then in possession of various facts and documents relating to the canals, acquired during his engagement as assistant and as principal engineer upon the different sections of the Erie canal, from the year 1818 to 1825; among which documents were the maps and field notes of a survey made for the canal appraisers, extending from Rome almost to the Hudson river, and which it was conceived would have an important bearing upon the surveys in contemplation.

In the month of April next following the presentment of the proposals above mentioned, the acting Commissioner, Mr. Seymour, informed your memorialist, at Utica, that the Canal Commissioners had accepted your memorialist's proposal for surveying the canals, and wished measures to be taken for the immediate execution of the work. Mr. Seymour likewise informed your memorialist, that Mr. Trumpbour, of Kingston, was desirous of aiding in the survey, and inquired of your memorialist whether he would be willing to make an arrangement with Mr. Trumpbour to that effect, observing at the same time, that both Col. Bouck and himself would be gratified to have Mr. Trumpbour accommodated. To this your memorialist replied that he was unacquainted with Mr. Trumpbour, and therefore could not rely upon his ability as a surveyor, or upon his willingness to enter into the views and to conform in every respect to the plan which your memorialist should pursue in making the surveys. Your memorialist further stated, that it was all important that the surveys and maps should not only be executed in the best manner, but that the same uniform system should be strictly adhered to throughout. To the justness of these views, Mr. Seymour at once assented, and stated that he had no doubt of Mr. Trumpbour's willingness to conform to them in all respects. And it was under this assurance and belief that your memorialist received from Mr. Seymour a letter of introduction to Mr. Trumpbour, for the purpose of seeing and conferring with him upon the subject.

This letter is the first of Mr. Seymour's in the memorial of Mr. Trumpbour, the substance of which is, that the Canal Commissioners would be satisfied with any arrangement which your memorialist might make with Mr. Trumpbour, consistent with the public interest. With this letter your memorialist proceeded to Mr. Trumpbour's residence, at Kingston, and on presenting the same to Mr. Trumpbour, stated to him distinctly the substance of the conversation between your memorialist and Mr. Seymour, as above related,



viz : that your memorialist contemplated doing the work in the best manner, and pursuing the same uniform plan throughout, and added, that if he (Mr. Trumpbour) was willing to make his surveys, field books and maps exactly to conform to those of your memorialist, he would be allowed to execute one half of the surveys. To all this he (Mr. Trumpbour,) unhesitatingly agreed; and moreover, for the purpose of ensuring the uniformity mentioned, he further agreed that the maps of his portion of the survey should be executed at Utica, by the same individuals whom your memorialist employed. Mr. Trumpbour likewise further assured your memorialist, that he would consult the wishes of your memorialist as to the mode of executing the surveys; that your memorialist might rely upon his honor that he would do every thing to the entire satisfaction of your memorialist, and that your memorialist should have no cause for complaint. It was with this distinct understanding of the relation in which Mr. Trumpbour was to stand to your memorialist in making the surveys, that the memorandum signed "Jacob Trumpbour and Holmes Hutchinson" was penned by Mr. Trumpbour, for the purpose, as he affirmed, of taking it to Mr. Seymour and procuring his contract. Your memorialist also prepared a statement which, in addition to the substance of the above-agreement, contained particular statements in relation to the maps, &c. This he declined signing, on the ground that there could be no misunderstanding, and that it was inexpedient to enter into a more explicit agreement until the views of the Commissioners upon the whole subject were more fully known. The particulars of this agreement your memorialist communicated to Mr. Seymour, to be made the basis of any contract that should be entered into between the Canal Commissioners and Mr. Trumpbour, in relation to the half of the survey above mentioned.

In the month of September, 1829, your memorialist called upon Mr. Trumpbour, at Port Byron, on the Erie canal, when he had, as your memorialist believes, about eight miles of the canal surveyed. Your memorialist again saw Mr. Trumpbour, at Utica, not long after the above, and was then informed that he, Mr. Trumpbour, had surveyed about twenty miles of the canal. At this interview, your memorialist had a particular conversation with Mr. Trumpbour in relation to the manner of executing the surveys.

The method adopted by your memorialist, and approved by the Canal Commissioners, was clearly explained, and Mr. Trumpbour was requested to conform to it. His reply was, that he had been accustomed to keep his field notes differently, but that they should nevertheless, be made to conform to those of your memorialist in the copies for the returns.

Your memorialist met Mr. Trumpbour again in Utica, in December following, and it was then that Mr. Trumpbour, for the first time, objected to the method which had been prescribed for making the surveys.

At the meeting of the Canal Board, next after, in the city of Albany, as referred to by Mr. Trumpbour, in his memorial, the subject of the canal surveys was introduced, and it is believed that the plan adopted by your memorialist was approved by a large majority

of the Board. And it is not true, as Mr. Trumpbour affirms, that the opinion of an individual member of the Board, viz: the Surveyor-General, was in direct opposition to the plan adopted by your memorialist; but he merely suggested that it would be an improvement to insert in the field books an additional copy of the courses and distances of the several lines comprised in the survey.

Subsequently to this, your memorialist, from a desire to preserve that uniformity in the surveys which was deemed from the first of so much importance, and likewise, to avoid all misunderstanding, and enable Mr. Trumpbour to obtain his contract and complete his proportion of the surveys, gratuitously offered to be at one half of the expense of an admeasurement of that portion of the canal, amounting to about one hundred miles, which Mr. Trumpbour had then surveyed after a plan of his own choosing, and which had been found upon examination, to be entirely different in principle, and greatly inferior in every respect, to that which your memorialist had, with the sanction of the Canal Commissioners, adopted.

Notwithstanding, however, this very liberal offer on the part of your memorialist, (to which Mr. Trumpbour at first assented) and the repeated express prohibition of the Canal Commissioners, the said Trumpbour most unwarrantably persisted in completing the surveys of his part of the canal upon the same objectionable plan which he had from the first adopted, and is now endeavoring, by his appeals to your honorable body, and by various exceptionable means, to force the same upon the people of the State of New-York.

For the purpose of more effectually accomplishing his object, the said Trumpbour in his memorial already alluded to, has incorrectly stated that your memorialist had departed from the plan of survey originally discussed and agreed upon between them, and either from a want of candor, or competency to judge, has stated to your honorable body, that "the surveys and field notes made under the direction of your memorialist will not attain the object for which the survey was directed."

In relation to the model of executing the surveys as pursued by Mr. Trumpbour, compared with that prescribed for his direction, your memorialist would state, that the mode adopted by your memorialist contemplates a base line running along the inner edge of the towing-path, (the best defined and most permanent part of the canal,) the several changes in the direction of which are referred to the magnetic meridian; that in all places where a variation in the breadth of the canal required, offsets on either side were made in a specified manner, and the distances to all locks, bridges, aqueducts, waste-wires, culverts, buildings, and other permanent objects, were carefully and accurately noted, and the same was done in respect to the lines of counties, towns, patents, lots, roads, &c. wherever the same were ascertained to intersect the canal.

The measurements thus made were inserted in a field book, prepared in a suitable manner, and illustrated by sketches or diagrams drawn in so correct and perspicuous a manner as to afford a very perfect map of the survey, and the whole so arranged, that any one at all conversant with measurements, could readily, and with the grea-



test practicable degree of precision, determine the position of any line or station, by a simple and easy reference to the nearest permanent object.

The method of Mr. Trumbour, on the contrary, supposes the measurement of two distinct and disconnected lines, one upon each side of the canal, the courses and distances of which were measured in the usual way, with the compass or circumferentor and chain, with such occasional references to permanent objects as the method pursued would permit; the results of which measurements were inserted in separate field books, without the aid of sketches or diagrams, and of course were presented in so detached and obscure a manner as to render a reliance upon them in many cases extremely uncertain, and a reference to them at all times, inconvenient.

The plan adopted by your memorialist affords the most ready and certain means of reference to permanent objects, for the purpose of designating the relative positions of the various lines and stations of the survey. A principal reliance is placed likewise upon the chain, the measurements with which are made under the most favorable circumstances along the level and even surface of the towing-path.

In the plan of Mr. Trumbour, on the contrary, a principal reliance is placed upon the circumferentor, an instrument, which, in addition to the unavoidable imperfections of its construction, is subject to the constant variation of the magnetic meridian, the influence of local attractions and other incidental causes. The measures with the chain are likewise made under less favorable circumstances, and of course are attended with less precision than in the plan adopted by your memorialist.

The memorial of Mr. Trumbour states that in the survey of basins and other places, where the breadth of the canal was greatly enlarged, your memorialist was obliged to abandon his plan, and adopt that of Mr. Trumbour. In the plan adopted by your memorialist, the mode of surveying the basins, &c. constituted but an occasional and partial exception to a general and important rule. Whereas, the plan of Mr. Trumbour was in its whole character and composition, neither more nor less than a combination or tissue of exceptions, and could not possibly be pursued in many places, that might be mentioned along the valley of the Mohawk, and on the Champlain canal, and must have been entirely unsatisfactory, even to himself, while traversing the numerous swamps, marshes, and other obstructions in the course of his surveys.

Your memorialist, feeling as he does, an entire confidence in the superiority of his plan, has no hesitation in inviting an investigation into its merits.

In accordance with this plan, your memorialist has completed the survey of the eastern portion of the Erie and Champlain canals.—The ground has been examined, and the measurements approved by the acting Canal Commissioners, and the Champlain maps and field books are now in the canal office, and the remainder of the maps are in such a state of forwardness as to ensure their completion within a short time, and would have been finished before this, but

for the delay occasioned by the difficulties interposed by Mr. Trumpbour.

Your memorialist, in conclusion, cannot forbear remarking that the interest of the State would be greatly prejudiced by the acceptance of Mr. Trumpbour's surveys, on account of their answering but very imperfectly the great and important objects for which they were directed; and moreover, when your memorialist considers the utter disregard manifested by Mr. Trumpbour, throughout the whole affair, to the instructions and advice of those whose views and directions he was bound to conform, your memorialist cannot conceive that the said Trumpbour has any right to require from the State an acceptance of his surveys, or any just claim to remuneration for expenses incurred in their execution.

All which is respectfully submitted,

HOLMES HUTCHINSON.

*Albany, February 27, 1832.*

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(C.)

*Memorial of Jacob Trumpbour, complaining of the violation of an engagement made with him by the Canal Commissioners, and praying compensation for his services.*

*To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened.*

The memorial of the undersigned, most respectfully sheweth: That by the Revised Statutes, chapter 9, title 9, article 1, sections 4 and 5, the Legislature enacted that "A complete manuscript map and field notes of every canal that now is, or hereafter shall be completed, and of all the lands belonging to the State, adjacent thereto, or connected therewith, shall be made, on which the boundaries of every parcel of such lands, to which the State shall have a separate title, shall be designated, and the names of the former owners, and the date of each title, be entered. The expense thereof shall be paid out of the Canal fund. If the Canal Commissioners, on examination of the premises, be satisfied that the cost and expense of making such map, field notes and survey, will exceed the sum of five thousand dollars, no such map and field notes shall be compiled. 5th. Every such map shall be compiled by the Canal Commissioners, who shall, for that purpose, cause all necessary surveys to be made. When prepared, it shall be submitted to the Canal Board for its approbation; and when so approved, shall be signed by the Canal Commissioners, be certified by them as correct, and be filed in the office of the Comptroller."

Your memorialist further sheweth, that in the winter of 1828, after the act above referred to became a law, he addressed a letter

to the Canal Commissioners, expressing his desire to undertake the surveys contemplated by said act. Soon after, your memorialist called on the Canal Commissioners for the conditions on which he was to make his proposals. In reply, the Canal Commissioners, or some one of them, stated that your memorialist should make propositions for the completion of the survey, and for a specific amount. Whereupon, he in substance made the following proposition in writing: To survey the Erie, Champlain, Oswego, Cayuga and Seneca canals, and make manuscript maps and field notes of the canals, as contemplated by said law, to be approved of by the Canal Board, for \$5,000, the sum appropriated, as will appear by reference to said written proposition, now in the possession of said Canal Commissioners. To this proposition no reply was made, except the general one, that other and more advantageous offers might be made.

In the winter of 1829, your memorialist called repeatedly on the Canal Commissioners for an answer to his proposition; but after some time had elapsed, the Canal Commissioners informed your memorialist, verbally, that Mr. Holmes Hutchinson had made a proposition to perform the same survey and duties for the sum of \$4,000, unless from actual vouchers for necessary expenditures upon the said work, they shall consider him entitled to additional compensation, which shall not exceed the ultimate compensation for said service, of \$5,000, as limited in the act, as will more fully appear by reference to the written proposition of Mr. Hutchinson, which was shown to me, and is in the possession of the Canal Commissioners. The proposition of Mr. Hutchinson was, as the acting Canal Commissioners informed your memorialist, more advantageous to the State, than that offered by him. To the acceptance of this proposition your memorialist objected, because it had been, both in terms and principles, materially changed from the specific character first laid down by the acting Canal Commissioners; and he claimed the right of making a new proposition, conformable to the principles of that offered by Mr. Hutchinson. To which the Canal Commissioners objected, because your memorialist had seen the proposition made by Mr. Hutchinson. Notwithstanding the objections, your memorialist informed the acting Canal Commissioners, that he should make another proposition; and did accordingly write them a letter, inclosing a proposition, the copies of which are as follows:

*Albany, 28th March, 1829.*

#### CANAL COMMISSIONERS.

GENTLEMEN,

Having made a proposition to you better than a year ago, for surveying of the Erie, Champlain, Oswego, and Cayuga and Seneca canals, as contemplated by the last revised laws, for \$5,000; which proposition was for a specific amount, in consequence of a received impression that no other could be received by the undertaking by the Commissioners. Having yesterday seen a proposition made to them

by a Mr. Hutchinson, offering to perform the said work for \$4,000, unless from actual vouchers for necessary expenditures upon the said work, they shall consider him entitled to additional compensation, which shall not exceed the ultimate compensation for said service of \$5,000, as limited in the act ; which proposition I understood is considered to be more beneficial to the State than mine, and is therefore considered as being entitled to be preferred to mine. I am therefore induced to trouble the Commissioners with a further proposal, to do the said work for such compensation as, from actual vouchers for necessary expenditures upon the said work, to be produced to the Canal Commissioners, they shall consider the same to be worth, and no more ; and under no circumstances to exceed \$5,000. Inclosed you have my proposition.

Yours respectfully,

JACOB TRUMBOUR.

To SAMUEL YOUNG,  
HENRY SEYMOUR, } *Canal Commissioners.*  
WILLIAM C. BOUCK, }

I offer for acceptance, to survey the Erie, Champlain, Oswego, and the Cayuga and Seneca canals, and make a manuscript map and field notes of those canals, as contemplated by 4th and 5th sections of the 9th chapter of the first part of the Revised Laws, to be approved of by the Canal Board, for such compensation for the whole of said service as the Canal Commissioners, upon the production of satisfactory vouchers for necessary expenditures in the performance of said duty, shall determine to be due ; which shall not, under any circumstances, exceed the sum of \$5,000, as limited by said act.

Respectfully submitted,

JACOB TRUMBOUR.

*Albany, 28th March, 1829.*

At a subsequent intercourse, the acting Canal Commissioners acknowledged the receipt of the letter and proposition, of which the above are copies, and intimated to your memorialist that the survey might possibly be divided between himself and Mr. Hutchinson ; or in case other employment could be found for this gentlemen, your memorialist would, in all probability, have to complete the entire surveys.

On the 12th day of April, 1829, Mr. Holmes Hutchinson, of Utica, called upon your memorialist in Kingston, with a letter from Henry Seymour, Esq. acting Canal Commissioner, of which the following is a copy :

*Utica, April 7th, 1829.*

JACOB TRUMBOUR, Esq.

Dear Sir—The bearer is Mr. Hutchinson, who made proposals for surveying the canals. He will confer with you on the subject of dividing the job with you ; and any agreement which you may make with him, not more disadvantageous to the State than Mr. Hutchinson's proposition, will be acceptable to the Canal Commissioners.

With much respect,

Your obedient servant,

HENRY SEYMOUR.

In compliance with the foregoing letter, Mr. Hutchinson and your memorialist entered into an agreement, of which the following is a copy :

*To the Canal Commissioners.*

We agree to divide the survey of the canals at *Canistota*. Mr. Hutchinson to take the eastern part of the Erie canal and the Champlain canal, and Jacob Trumpbour to take the western part of the Erie canal, and the Cayuga and Seneca, and Oswego canals ; each to be entitled to one-half of the \$5,000, or the one-half of the proposition as made by Mr. Hutchinson.

JACOB TRUMPSBOUR,  
HOLMES HUTCHINSON.

*April 13, 1829.*

In May, 1829, on his way from Kingston to commence the survey of the canals, your memorialist consulted with the Surveyor-General on the plan of survey to be adopted, and has throughout conducted his operations in accordance with the opinions which he and the Surveyor-General at that time reciprocally entertained. Proceeding on, your memorialist met with Henry Seymour, Esq. acting Canal Commissioner, at Rochester, and from thence returning with him along the line of the Erie canal to Port-Byron, while on this journey, your memorialist showed him the agreement which he had made with Holmes Hutchinson, as above copied, and received from him, verbally, general instructions in relation to the lands to be set apart for the canals, &c. Your memorialist at that time stated to him the plan of survey he intended to pursue, as he had frequently done on former occasions, to which no objections were made. He also suggested to the said Henry Seymour the propriety of entering into a written contract for the execution of the surveys, &c. to which he replied, that there was no necessity as the agreement was perfectly understood. After having progressed in the survey till some time in August, 1829, your memorialist requested Mr. Seymour, who was then at Utica, to advance money to defray the necessary expenses of the survey, to which he objected on account, as he stated, of not having made the necessary arrangement with the Comptroller for drawing the money, but concluded to, and did advance the sum of \$250, for which your memorialist gave his note, which the said Seymour promised should be allowed in the general settlement, and also observed, that a written contract should be made before he would be willing to make any farther advances.

In October, following, at a meeting of the Board of Canal Commissioners held at Utica, Mr. Henry Seymour was authorised and instructed by the Board, to make written contracts, and advance the money requisite to the survey of the canals. On the breaking up of the Board, for the purpose of proceeding to the examination of the route of the proposed Chenango canal, your memorialist requested Mr. Seymour to make him an additional advance of money on account of the canal survey in which he was employed. Mr. Seymour being unwell, and also in haste, instructed Mr. Hutchinson to procure your memorialist an additional advance of \$250, which

he did, for and in behalf of the Canal Commissioners, as will appear by the receipt he gave at the time for that sum.

In November, your memorialist wrote to Mr. Hutchinson to call on Mr. Seymour for a further advance of money for him, which he wished forwarded to Port-Byron, for the payment of his hands, as he was then about closing his survey for the season; the copy of which letter has been misplaced. In reply Mr. Hutchinson wrote the following:

*Utica, November 29, 1829.*

DEAR SIR,

I arrived last evening from New-York, and found your letter on the subject of funds. I can only say that Mr. Seymour expects that the contract will be executed, and security given for the performance of the survey; and further, that he holds me responsible for the whole work. I shall be for the next fortnight in this village, and shall expect to see you shortly on your return.

Respectfully yours,

HOLMES HUTCHINSON.

JACOB TRUMBOUR, Esq.

After having finished the Cayuga and Seneca canals, and about 85 miles of the Erie canal, your memorialist suspended the survey for the season, and returned to Utica, where he met with Mr. Hutchinson, who informed him that Mr. Johnson, the person whom he had employed, had commenced and finished about 30 or 40 miles of the survey of his part of the canals.

On examining his plan of survey, your memorialist found to his astonishment, that Mr. Hutchinson, or his men, had made a survey differing very materially from his, more particularly as the acting Canal Commissioner, as well as Mr. Hutchinson, knew his plan previously to, and during the surveys made that season. Of this difference in the plan of survey, your memorialist complained, for the reason that Mr. Hutchinson knowing the above facts, had commenced his survey late in the fall, with the knowledge of Mr. Seymour, and well informed, as the Engineer of the acting Canal Commissioners must have been, that he had departed from the uniformity in the survey of the Erie canal, which had been previously discussed, and agreed on by him and your memorialist, as highly desirable. With a view to reconcile this difference between us, your memorialist invited Mr. Hutchinson to an interview with Mr. Seymour, which took place forthwith. At this meeting, your memorialist pointed out all the difficulties of the case, the deviation of Mr. Hutchinson from the plan of survey, which had been previously well understood and consented to, with his eyes open to the fact of the discrepancy, and with the knowledge that uniformity on the Erie canal was desirable. Your memorialist at that time, while a small portion only of Mr. Hutchinson's part of the Erie canal had been surveyed, advised a resurvey to be made on the plan which he had followed, in accordance with the opinion of the Surveyor-General. Mr. Seymour advised a reference of the two plans of survey, in the first place to the Canal Board, as the whole survey would finally



have to be approved of by them. At this meeting, the letter from Mr. Hutchinson, before copied, on the subject of his responsibility for the entire survey, was discussed, and against the idea of his being a subordinate to Mr. Hutchinson, your memorialist in utter astonishment protested in the most unequivocal terms, and in confirmation of this, he produced the original letter which Mr. Seymour, had written on the subject of dividing the job of surveying the State canals. The contents of this letter he acknowledged with a considerable surprise, had escaped his memory, and from the fact of Mr. Seymour instructing him to proceed directly to Lockport, and again to recommence the survey of the canals at that place, he thought the question of his being subordinate to Mr. Hutchinson was forever put at rest.

In the winter of 1830, conformable to the suggestion of Mr. Seymour, Mr. Hutchinson and your memorialist submitted the plans of their respective surveys to the Canal Board for the purpose of obtaining an expression of its opinion. After the parties had been heard, the Canal Board referred the subject to the Surveyor-General to report thereon, which he verbally did shortly after, in substance as follows:—That he had examined the plans of the two surveys, and that the survey of your memorialist was decidedly the best, and the one most proper to be adopted, and that they must have just such a written description of the boundaries on both sides of the canal as had been presented by your memorialist. The Surveyor-General, after stating that he did not feel disposed to subject either of the parties to the additional expense of a re-survey, to conform to the other, moved that each of the parties should be allowed to make an atlas of their respective surveys, which motion prevailed; notwithstanding Col. Young, a member of the Board, objected, on the ground that as the plans of survey were to be handed down to posterity, he was desirous that the surveys, at least of the Erie canal, should be uniform; on which the Canal Board adjourned. Subsequently, while at Albany, your memorialist and Mr. Hutchinson were repeatedly urged by the acting Canal Commissioners, to reconcile their different surveys of the Erie canal, as suggested by Col. Young, but after several interviews, this was found to be impracticable. At this time, as well as on former occasions, your memorialist urged upon Mr. Seymour the necessity of entering into a written contract, in order to remove the objection, for the payment of money, which had suggested on former occasions, when advances had been made.

In the spring of 1830, on the way to re-commence his surveys, your memorialist stopped at Utica, for the purpose of seeing both Mr. Seymour and Mr. Hutchinson, but they were absent from that village; and inasmuch as your memorialist there learned that Mr. Hutchinson's surveyor, Mr. Johnson, had re-commenced the survey of the canal conformably to his original plan, on arriving at Port Byron, on the canal, I addressed a letter to Mr. Seymour, in the words following:—

*Port Byron, 20th May, 1830.*

DEAR SIR—

I arrived at this place some few days ago, in order to proceed in the survey of the canals. On my way here, I called at your house, when I was informed you was gone west; since I have learned you had returned. On the arrival of my hands, (which I expect will be in about a week,) I calculate to proceed to *Buffalo*, to commence the survey of the Erie canal, and connect with my former survey at *Rochester*; from thence proceed to *Canton*, to continue my former survey to *Syracuse*; thence proceed to the survey of the Oswego canal, after which, I shall survey the remaining part of the Erie canal from *Syracuse* to *Canastota*, to connect with Mr. Hutchinson's survey. Should you have any particular instructions to give upon the subject of the location of the ground to be set apart for the State, more than what has already been given, and be desirous to have any particular part of the canals surveyed first, different from my plan of operation, you will be pleased to communicate.

Yours respectfully,

JACOB TRUMBOUR.

HENRY SEYMOUR, Esq.

In reply Mr. Seymour wrote the following:

*Jacob Trumbour, Esq.*

SIR—Your letter of the 20th inst. has been duly received. After having been so often informed that your difficulties with Mr. Hutchinson must be arranged before the Canal Commissioners would enter into any contract with yourself, I am not a little surprised that you should now announce your intention of re-commencing the surveys of the canals without reference to those indispensable preliminary conditions. The Commissioners consider Mr. Hutchinson as the sole contractor for the survey of the canals, will hold him responsible for its due performance, and will pay him, and him only, for the expense of its completion. Your having failed to make such an agreement with Hutchinson as was contemplated and required, before the Commissioners could contract with you for any part of this work, you must consider yourself entirely unauthorised to enter upon the execution of it, and must abstain from any further proceeding in relation to it.

Respectfully, your obedient serv't,

HENRY SEYMOUR,

In behalf of the Canal Commissioners.

Notwithstanding this most extraordinary prohibitory letter from Mr. Seymour, your memorialist recommenced, and some time in August or September last, entirely finished his part of the surveys of the canal. On his way home, your memorialist addressed a letter to each of the acting Canal Commissioners, of which the following is a copy:



*South Brookfield, August 31, 1830.*

*Dear Sir—*

On my return home I called at your house, and learned that you would be absent some time. I have thought it my duty to inform you, that I have completed the survey of the Cayuga and Seneca, and Oswego canals, and also that part of the Erie canal from Buffalo to Canastota, and shall proceed to make out the returns of survey as soon as possible. Will you have the goodness to acknowledge the receipt of this?

Your's respectfully,  
JACOB TRUMPBOUR.

HENRY SEYMOUR, Esq. Utica.

*South Brookfield, August 31, 1830.*

*Dear Sir—*

I had intended to have called and seen you on my return home; but my business leads me through Otsego and Delaware. I have thought it my duty to inform you, that I have completed the survey of the Cayuga and Seneca, and Oswego canals, and also that part of the Erie canal from Buffalo to Canastota, and shall proceed to make out the returns of survey as soon as possible. Will you have the goodness to acknowledge the receipt of this?

Your's respectfully,  
JACOB TRUMPBOUR.

WM. C. BOUCK, Middleburgh, Schoharie co.

Your memorialist, finding himself wholly neglected by the acting Canal Commissioners, not only in the examination of the surveys while they were being made, (although Mr. Seymour made repeated promises that he would,) and in the examination of his maps, &c., to enable him to make fair returns of surveys, but also in omitting to reply to his letters, came to Albany about the first of February, last past, furnished with his maps and field notes, &c., and determined to settle his differences amicably with the acting Canal Commissioners if practicable, or failing therein, to appeal to the honorable the Legislature, for that justice which they so unaccountably withhold from him. Since his arrival in Albany, your memorialist has repeatedly waited on the acting Canal Commissioners, and invited them to an examination of his surveys, but all in vain. He has also been credibly informed, that it is the intention of the acting Canal Commissioners to authorise Mr. Hutchinson to re-survey the canals which your memorialist has already surveyed, as soon as the spring shall be sufficiently advanced, regardless of their engagements.

The incidental expenses attending the surveys made by your memorialist, will probably exceed fifteen hundred dollars, (besides a just compensation for his services,) including the two sums of \$250 each, as previously noticed in this memorial, and for one of which sums he gave his note to Mr. Seymour, which note your memorialist has been credibly informed, has since been put into the hands of Mr. Hutchinson, with what view your memorialist cannot compre-

hend, unless it be to establish, if possible, the subordinate relation of your memorialist to him.

Your memorialist would neglect that duty which every citizen owes his country, if he failed to apprise the Legislature that the surveys and field notes made under the direction of Mr. Hutchinson, will not attain the object for which the map is directed. That object is believed to be, to furnish an authentic and precise record of the land belonging to the State, so that the owners of adjoining lands may know where the boundary line is, and that in controversies which may arise, evidence may be easily obtained from the county clerk's office, to determine the respective rights of the State and of individuals.

Your memorialist is constrained to say, from an examination of the maps and field notes made by the persons employed by Mr. Hutchinson, that they will not furnish any such evidence. The boundaries of the State property are not actually run, but are artificial lines laid down on the map, and depend upon a base line on the margin of the canal, and upon off-sets across the canal and the towing-path, leaving the outlines which constitutes the boundaries on the map, to be located without the aid of any written description of them, and without courses or distances, the buildings and other permanent monuments along the canal are not described, nor is their position designated in reference to any point of the outlines. This has been the general plan adopted by the surveyor employed by Mr. Hutchinson; but when they came to a basin or other place, when it was impracticable to measure across the canal, they have abandoned their plan and pursued that of your memorialist. An inspection of the maps and field notes made by those surveyors, will more fully exhibit the radical defect of their plan.

Your memorialist would further represent, that in making the survey herein before mentioned, he could discover no releases to the State, of land occupied for the purposes of the canal, no entries by the appraisers or Canal Commissioners, of lands appropriated for those purposes, as required by law, and in fact no evidences whatsoever, of the title to any such property being vested in the State, (except in a few instances where information has been forwarded to your memorialist by the Comptroller, to whom your memorialist was referred by the Canal Commissioners for information, they stating that there were no documents on the subject in their possession.) The statute before recited proceeds on the ground that the State has "a separate title" to the land to be surveyed and designated on the map; and as it is presumed the compilation of the map cannot vest any such title, it is obvious that its completion in the present condition of the evidence of the title of the State, instead of establishing land-marks and settling controversies, will only be a new and prolific source of future litigation.

Your memorialist humbly suggests the necessity of some legislative provision to discover and preserve the evidences of the title of the State to the lands adjacent to the canals. In the absence of all written evidence on this subject, your memorialist applied to the acting Canal Commissioner, Henry Seymour, for instructions, particularly as to the width of the land on each margin of the canals,

which should be designated as belonging to the State. The instructions received were generally in substance as follows :

The bounds of the canal to extend from the foot of the outside slope of the banks, and where there is no embankment, the lines are to include a space of five feet on the burm side, and twelve feet on the towing path side, measured from the top of the slope on each side of the canal, always assuming a slope of two feet, or to include a space of eight feet on the burm side, and fifteen feet on the towing-path side, measured from the canal ; also to include all feeders, basins and slips, made at the expense of the State, and also those made by individuals ; all lands purchased by the State, and buildings, all culverts, waste-weirs and weigh-locks, and all lands flowed by water ; also giving to your memorialist a discretionary power to vary the location where the circumstances of the case might appear necessary for the purposes of the canals.

Under those directions, your memorialist has surveyed and marked out the boundary lines on each side of the State property, and has designated the same on his maps, with their courses and distances. When completed, they are to be accompanied by a written description of the boundaries on both sides of the lands belonging to the State, with the necessary references to buildings and other permanent monuments.

Your memorialist, believing that great injustice has been done him, and apprehending the entire loss of his services and expenses in the employment of the State, has been unable to discover any other mode of redress than by an application to the Legislature, and he therefore humbly prays that his case may be investigated ; that provision may be made to compensate him for the services he has rendered, and the expenses he has incurred, under the authority of the Canal Commissioners, and that it may be determined whether the plan of surveying and mapping adopted by Mr. Hutchinson, or that pursued by your memorialist, is best adapted to the requirements of the law, and to attain the objects of the Legislature.

And your memorialist would suggest that until the principles on which the survey should be made are definitively settled, future proceedings by the Canal Commissioners should be suspended : And as in duty bound, your memorialist will ever pray.

JACOB TRUMBOUR.

24th March, 1831.

( D. )

*Memorial of Jacob Trumpbour, asking remuneration for services rendered the State, the payment for which he alleges to have been unjustly withheld from him.*

*To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened.*

The memorial of Jacob Trumpbour respectfully sheweth :

That your memorialist having been engaged in the survey of the Erie, Cayuga and Seneca, and Oswego canals, in connection with Mr. Holmes Hutchinson, under the authority of the Canal Commissioners, having accordingly performed his own part of the said survey in the seasons of 1829 and 1830.

Your memorialist during the succeeding winter, attended on the acting Canal Commissioners with his surveys and maps for their examination. Some unexpected and inexplicable misunderstanding had occurred between your memorialist and the acting Canal Commissioner and the other surveyor, which prevented your memorialist from completing his returns of survey, to which he has not been instrumental, and on account of which a pretext has been afforded to the said Canal Commissioner of making no greater advances on account of his said work than five hundred dollars, and a refusal to make any further payments for his expenses and services, and left no other alternative to your memorialist than to submit the whole subject, by his memorial of the 24th March, 1831, to the last Legislature, a copy of which is hereunto annexed, and to which he would again refer for a full detail of all the circumstances attending his case, and which he adopts as a part of this memorial.

Your memorialist further sheweth, that the said memorial was referred to the standing committee on canals and internal improvements, which committee, near the close of the session, moved to be discharged from the consideration thereof, and that the subject matter therein be referred to a special committee to investigate the same during the recess of the Legislature, and report thereon to the present Legislature, which prevailed, and a special committee was accordingly appointed. That on a motion for a reconsideration of said resolution, made on the last day of the session, said resolution was ordered to be laid on the table, and nothing further done therein.

Your memorialist has, since the adjournment of the last Legislature, considered it his duty to lay the subject before the present acting Canal Commissioners for adjustment, who have declined doing any thing towards such an adjustment.

Your memorialist further states, that since the last session he received from the said Holmes Hutchinson the following letter :

*Horse Heads, Tioga Co. Dec. 4, 1831.*

JACOB TRUMBOUR, Esq.

Dear Sir—In September last I was directed by the Canal Commissioners to proceed and finish the survey of the canals, agreeable

to my engagement with the State. In consequence, however, of the lateness of the season, and being occupied with other business, I have been unable to go on with the work as intended. My object in writing this letter is to ascertain from you whether you intend, or have a wish to fulfil your engagement with me, by making the survey and maps of the western part of the Erie, and the Oswego and Cayuga and Seneca canals.

You must be aware that this business has been delayed by you unnecessarily, and that I hold your obligations for cash lent.

Should you wish to go on and finish the survey and maps, you must first execute a contract, with security that will be acceptable to the Canal Commissioners, to complete the survey and maps in accordance with our previous understanding, to conform to my survey, and the maps to be made at Utica on the same scale and style of finish.

I shall be happy to hear from you on the subject, addressed to me at Utica; and should you wish to see me, I intend being in Albany in January, and will meet you there at any time you may designate. I hope you will favor me with an early answer to this letter, for should your previous survey not be made to conform to mine, and to meet the views of the Canal Board, and should you yet decline to fulfil your engagement, I shall make arrangements to perform my contract with the State as early as the weather will permit in the spring.

Sincerely yours,  
HOLMES HUTCHINSON.

To this letter no answer was returned by your memorialist, as it assumed the fact, that he was subordinate to Mr. Hutchinson, and because it would have required an insertion of all the facts set forth in his memorial.

Your memorialist conceives that he is justly entitled to a remuneration from the State for his services, particularly as it is said large sums of money, to the amount of three thousand dollars, have been advanced to Mr. Hutchinson, fifteen hundred of which long prior to any services performed by him, and the other sum after but a small portion of his part of the survey had been made.

Your memorialist further states, that he has been most industriously employed for two seasons in accomplishing the work required of him, and as he believes, and expects to demonstrate, in a manner and with an accuracy entirely conformable with the objects designed by the Legislature in authorizing the said survey; and that actuated with an ambition, although devoted to the interest of the State, he has been at a very considerable expense, besides his own labor and services, for which he has not received any compensation beyond that stated in his said memorial; and therefore prays for such an investigation in the premises, and for such relief, as the nature of his case and his services entitle him to. And your memorialist, as in duty bound, will ever pray.

JACOB TRUMBOUR.

*February 4, 1832.*

[A. No. 188.]



**No. 189.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**REPORT**

**Of the committee on the poor laws, relative to the publication of the poor laws in a pamphlet form.**

Mr. M'Donald, from the committee on the poor-laws, to whom was referred the resolution of the Assembly, instructing them to inquire into and report to this House the expediency of publishing in a pamphlet the poor laws, with suitable forms and explanations, to be prepared by the Secretary of State, and distributed to the various officers in the several counties in this State, who are directly connected with the support and management of the poor,

**REPORTED:**

That there are in this State upwards of fifteen thousand paupers, supported at an annual expense of about two hundred and fifty thousand dollars. It is obvious then that immense responsibilities are involved, not only in the effort to ameliorate the condition of the unhappy mass thus thrown upon the charity of the public, but in the just and prudent expenditure of a sum nearly equal to the whole annual expense of the State government.

In our country, and perhaps in ours alone, every healthy man, with Heaven's blessing on his honest exertions, is able, under common circumstances, to provide a comfortable support for himself and his family. But in reviewing the statistics of our poor-houses, we are met by proof that at least three quarters of the poverty is voluntary; that it is the crime, and not the misfortune of the pauper. Such stand before the public in the character of delinquents; and happily our poor-houses supply the means of restraining the licentious, of punishing the refractory, and of compelling the idle to labour. The more, therefore, the nature and tendency of the poor

house system are made known, with so much the more certainty will they stimulate exertion, and operate as a terror to the idle and profligate.

Connected with the law for the support and management of the poor, are the acts for the care of habitual drunkards, for the support of bastards, and for the care and safe-keeping of lunatics ; and superintendents of the poor, overseers and justices, are charged with the execution of these several acts. It is important, in every view of the subject, that these officers should be well informed of their duties ; and yet they cannot obtain any of the laws in which these duties are defined, without purchasing the whole of the Revised Statutes, at an expense which few of them can afford.

It will be recollected that the several acts relative to elections, highways, common schools, and the militia, have been published in pamphlet form, at the expense of the State, and have been distributed to the various officers concerned ; and the committee are impressed with the conviction, that a similar publication and distribution of the poor laws is equally necessary. It is accordingly recommended.

In construing the act for the support of poor, some material diversity of opinion is known to exist, and this produces a corresponding diversity in practice. To avoid the embarrassment, and to obviate the evils arising from this cause, the committee respectfully recommend that an exposition of the law, together with suitable forms, be prepared under the direction of the Secretary of State, and published as an appendix to the pamphlet. The committee accordingly ask leave to introduce a bill.



**No. 190.**

**IN ASSEMBLY,**

**March 7, 1832.**

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**REPORT**

**Of the Canal Commissioners, on the petition of Rynier Van Valkenburgh and others.**

The Canal Commissioners, to whom was referred by the Honorable the Assembly, the petition of Rynier Van Valkenburgh and others, respectfully submit the following

**REPORT :**

The petitioners state, that they are "owners and lessees of lots in the city of Albany, who have been assessed for constructing a bridge across the Erie and Champlain canals, on Lawrence-street."

The Erie canal crosses Lawrence-street nearly at right angles, and rendered the construction of a bridge necessary and proper. At the time the canal was constructed a bridge was erected on the aforesaid street, at the expense of the State. This bridge has been once rebuilt, and is one of the bridges which are considered chargeable to the expenses of the canal.

**WM. C. BOUCK,  
JONAS EARLL, JUN.**

**March 6, 1832.**

**[A. No. 190.]**



**IN ASSEMBLY,**

**March 8, 1832.**

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**REPORT**

**Of the select committee, on the petition of Jacob Conrad, Jonah Moore and others, of the town of Lansing, in the county of Tompkins.**

**Mr. Speed, from the select committee, to whom was referred the petition of Jacob Conrad, Jonah Moore and others, of the town of Lansing, in the county of Tompkins,**

**RESPECTFULLY REPORTS:**

**That it appears from the petitions and papers accompanying the same, that the said Jacob Conrad, Jonah Moore and Oliver Phelps, did, in the year 1821, as commissioners of highways, lay out and cause to be opened, a public highway from the village of Ludlowville in said town, through the lands of Cyrus Clark and others, to the Cayuga Lake.**

**That said Cyrus Clark commenced two suits, the one in the court of chancery, and the other in the supreme court, against said commissioners for laying out said road, and causing the same to be opened.**

**That after various and expensive law suits the said Clark obtained a judgment against said commissioners, for \$402; which sum the Legislature in 1827, directed the supervisors of the county of Tompkins to raise on the town of Lansing, in said county, and cause to be levied, collected and paid, to said Jacob Conrad and Jonah Moore, which was accordingly done.**

The petitioners further represent, that the costs and other incidental expenses which they have paid, or are liable to pay, amounts to \$280; which sum they ask the Legislature to direct the supervisors, at their next annual meeting, to raise on the town of Lansing, and cause to be collected and paid to the said Jacob Conrad and Jonah Moore.

Your committee not being fully satisfied that the whole of the above sum is due to the petitioners, but believing that the principal part thereof is just and ought to be paid, have prepared a bill, and ask leave to introduce the same.

**IN ASSEMBLY,**

**February 29, 1832.**

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**REPORT**

**Of the committee on medical subjects, on the petition  
of the Medical Society of the county of Erie.**

**Mr. Maxwell, from the committee on medical subjects, to whom  
was referred the petition of the Medical Society of the county of  
Erie,**

**REPORTED :**

**That a medical society was organized in said county, (then the  
county of Niagara) in the year 1810; owing to the late war, the  
meetings of the said society were interrupted, and the minutes and  
records lost. The physicians of the county convened in the year  
1816, organized, "de novo," a medical society; by some neglect a  
copy of the minutes and proceedings of this meeting were not filed  
in the clerk's office until the year 1829; in the mean time meetings  
had been held and business transacted by the society. Some irregu-  
larities have also occurred as to the time of holding the stated meet-  
ings of said society, which have produced doubts in the minds of  
the members of the society as to the legality of their proceedings; it  
is to remove these impressions and their effects, that the said society  
petition for a law confirming its organization in 1816, and legalizing  
its subsequent proceedings.**

**The committee having investigated this matter, ask leave to intro-  
duce a bill in conformity to the prayer of the petitioners.**



**No. 193.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**COMMUNICATION**

**From Charles H. Ruggles, Judge of the Second District.**

*Poughkeepsie, March 3, 1832.*

To the Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.*

Sir,

I have not kept any account of the fees received by me as circuit judge and vice-chancellor, since my appointment in March, 1831. But by an estimate from recollection I can say that those fees have not exceeded the sum of seventy dollars.

I estimate that I have travelled in the discharge of my official duties, as circuit judge and vice-chancellor during the year 1831, about two thousand five hundred miles, and have expended in travelling expenses and disbursements, from \$230 to \$250.

Ill health must be my excuse for not making this communication at an earlier day. I am still confined to my bed by fever.

I am respectfully,

Your obed't. serv't.

**CHARLES H. RUGGLES,**

*Circuit Judge Second Circuit.*





**IN ASSEMBLY,**

**March 9, 1832.**

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**REPORT**

**Of the Canal Board, on the petition of Neal Brown.**

The Canal Board, to which was referred, by the honorable the Assembly, the petition of Neal Brown, submit the following

**REPORT:**

The petitioner, Neal Brown, in 1825, entered into a contract for constructing sections No. 2 and 7 of the Champlain canal, between Fort-Edward and Saratoga. The prices stipulated in the contract were for excavation at the rate of six cents, and for embankment at the rate of twelve cents per cubic yard.

In January, 1827, Daniel Stevenson presented a petition to the Canal Board, alleging that very soon after Brown commenced the work on "section 2, the excavation was found to be altogether different from what was anticipated; instead of being gravelly loam and clay, that might be ploughed and scraped, it proved to be gravel and large stone, firmly cemented together with blue clay, forming a mass that could neither be scraped, ploughed nor pecked, and that the only resource left was to blast it." Mr. Stevenson further states, that in consequence of these difficulties, Brown failed to fulfil his contract, and that he, as the surety of Brown, made a verbal agreement with the acting Canal Commissioner, on the 20th of September, 1826, to execute the work which remained to be done, for the prices contained in the contract to Brown. He claimed to have sustained heavy losses, and prayed the Canal Board for an allowance on the contract prices. Mr. Stevenson, in support of his claim, presented the following estimate, made by the engineers who had charge of the work, to wit:

**"CHAMPLAIN CANAL.**

*Section No. 2. Neal Brown & Co. original contractors.*

5,015.85 cubic yards of hard-pan, 56 cts..... \$2,808 87

1,067.00 yards of which was excavated previous to the  
20th of Sept. 1826, and

3,948.85 yards after the 20th.

8,483.29 cubic yards of stony excavation, 13 cts, ..... \$1,102 82

7,478.10 yards of which was excavated previous to the  
20th of September, 1826, and

1,005.00 yards after the 20th,

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**\$3,911 67**

I certify that the above is a true statement of the amount of hard-pan and stony excavation in section No. 2 of the Champlain canal, and that for excavating the same I believe it to be worth the price above stated, including the contract price.

*Albany, January 12th, 1827.*

**JOHN P. CLARK,**  
*Ass't Engineer.*

It appears that there has been excavated on section No. 2, by Daniel Stevenson, contractor since the 20th September, 1826, four thousand nine hundred and fifty-three and  $\frac{85}{100}$  yards, which in my opinion is worth to excavate it in the most favorable season, at least fifty cents per yard in addition to the contract price.

**GEORGE YOUNG, Engineer.**

**HON. SAMUEL YOUNG, Acting Canal Com."**

The Canal Board referred the claim of Mr. Stevenson to the acting Canal Commissioner who had in charge the execution of this work; who submitted to the Board the following report, to wit:

"The undersigned, to whom was referred the preceding petition by the Canal Board, Reports:

"That the facts stated in the petition are substantially true. Sections No. 2 and 7 were taken by the original contractors, Neal Brown and John McGee, at the following prices, as will appear by the original contract herewith presented to the Board, to wit: six cents for excavation, twelve cents for embankment, and seventy-five cents for slope-wall, and \$150 for grubbing section 7. Although the prices were low, considering the character of the work

as it appeared at the letting, yet it is believed that with economy section 7 may have been completed for the sums specified in the contract. On section 2, however, there must have been a considerable loss; and the loss which has occurred on that section since the re-letting of the contract, the petitioner, who has done the work, and who was one of the bail for the original contractors, asks to have refunded to him. Under the peculiar circumstances of the case, this appears to be reasonable. And as Mr. Clark, the assistant engineer, had daily opportunities of examining the work, by being stationed upon that part of the line, it is recommended that his estimate of its cost be made the standard of allowance to the petitioner.

"All which is respectfully submitted.

"SAMUEL YOUNG.

"29th January, 1827."

By referring to the aforesaid estimate, it will be seen that John T. Clark, the assistant engineer under whose immediate direction the work was done, certified that Mr. Stevenson had excavated 3,948.85 cubic yards of hard-pan, worth 56 cents per cubic yard, and 1,005.00 cubic yards of what he calls "stony," worth 13 cents per cubic yard.

The Canal Board made Mr. Stevenson the following allowance, to wit:

On 3,948.85	cubic yards of hard-pan,	50 cts. per yard,	\$1,974 22
1,005.00	do	stony, 7 cts.	do 70 35
			<hr/> \$2,044 57

The foregoing allowance was made by virtue of the authority vested in the Canal Board by the 33d section of an act entitled "An act relative to the canals," passed April 18, 1826.

In February, 1828, Neal Brown, the present petitioner, presented his application to the Canal Board for an allowance on that part of the work which he had performed previous to the time he abandoned the contract. He repeats substantially the allegations of Mr. Stevenson in relation to the character of the work, and states in addition, that subsequent to the execution of his contract with the Canal Commissioners, the previous location of the line of the canal, on both sections, was altered, by which the amount of excavation was increased, and the work rendered more expensive. He

also states that he was subjected to the expense of making a burm bank, which, as he supposes, had not been contemplated by his contract. In this memorial, Mr. Brown states his loss at \$1,750, exclusive of eighteen months' services.

The Canal Board, on the 18th February, 1828, proceeded to the consideration of this claim, and the following is an extract from their minutes on this subject :

“ 18th February, 1828.

“ Testimony taken by the Canal Board in the case of the petition of Neal Brown for an extra allowance on his contract to construct sections No. 2 and 7 of the Champlain canal.

“ Petition read.

“ Contract read in evidence.

“ George W. Young was called, and testified, that he was an engineer on the Champlain canal, at the making and during the execution of the contract. Thinks the direction of the line was changed about eight feet, into a steep hill. The petitioner excavated 1,067 yards of hard-pan, and 1,005 yards of stone excavation. Witness' original estimate of the excavation on section No. 2 was 23,275 yds. at 14 cents per yard. The quantity excavated was 29,391.93 yds. He thinks the clay on the top was worth eight cents per yard. The witness thinks there was an increase of excavation in consequence of the alteration of the line ; 3,021.06 yards of excavation on section No. 2, and 5,224.52 yards on section No. 7, were on account of the burm bank. Witness thinks the excavation on section No. 2, was not of a different character than was contemplated by him at the time of the making of the contract ; as to section No. 7, he is not positive.”

“ 7th March, 1828.

“ The Board *Resolved*, That there be allowed to Neal Brown, over and above the contract price for the construction of section No. 2 and 7 of the Champlain canal, the sum of two hundred and fifty dollars, and that the same be paid by the Commissioners of the Canal Fund.”

At this period the Canal Board were acting in obedience to an act passed April 17, 1827, entitled “ An act to amend the act entitled ‘ An act relative to canals,’ passed April 18th, 1826.”

By comparing the first section of the last recited act, with the provisions of the 33d section of the act of 1826, it will be seen that the powers of the Canal Board in reference to allowances on canal contracts had undergone a material change. The act of 1826 vested the Canal Board with discretionary powers, but that of 1827 restricted them to claims of a specified description. It does not distinctly appear from the minutes, on what ground the allowance of \$250 was made, but it is believed that it was on account of the alteration of the location of the line of canal, as it does not appear from the testimony of George W. Young that the character of the excavation on either of the sections was different from what he contemplated at the time of making the contract, but he admits that the line was altered, and a berm bank constructed.

In the testimony of George W. Young, it would appear as if the petitioner had "excavated 1,067 yards of hard-pan, and 1,005 yards of stone." The quantity of stone excavation here given is evidently incorrect. This is clearly shown by referring back to the estimate signed by J. T. Clark and George W. Young. In that estimate the latter engineer certifies that "Daniel Stevenson had excavated on section No. 2, since the 20th September, 1826, 4,953.85 yards." This quantity is, no doubt, composed of the two items in Mr. Clark's estimate as having been excavated after the 20th Sept. 1826, to wit: 3,948.85 yards of hard-pan, and 1,005.00 yards of stone, leaving for Mr. Brown 1,067.00 yards of hard-pan, 7,478.10 yards of stone.

In 1831 the petitioner again presented his claim to the Canal Board for a further allowance; but unwilling to deviate from, as they supposed, a highly important principle, established soon after the organization of the Board, they declined to entertain the claim of the petitioner, and the following is an extract from their minutes on this subject, to wit:

*" March 17, 1831.*

"The petition of Neal Brown for an extra allowance upon section 2 on the improved part of the Champlain canal, having been read and examined, and it appearing that the Board have once heard the claim of the petitioner for one extra allowance upon the section, and made an allowance:

*" Resolved,* That the Board cannot, by the law, re-hear and re-adjudge this case."

The Canal Board are satisfied that Mr. Brown has been a sufferer by his contract ; and if the Legislature should think proper to extend to him the same rule of allowance which was adopted by the Canal Board in the case of Daniel Stevenson, there would be due to him as follows, to wit:

For excavating 1,067 yards hard-pan at 50 cents per yard,	\$533	50
do 7,478.10 do stone, 7 do		523 47
Total, .....	\$1,056	97

All which is respectfully submitted.

W. C. BOUCK,  
A. C. FLAGG,  
SILAS WRIGHT, JR.  
S. YOUNG,  
A. KEYSER,  
JONAS EARLL, JR.

*Dated Albany, 8th March, 1832.*

**IN ASSEMBLY,**

**March 6, 1832.**

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**REPORT**

**Of the select committee, on the petition of Daty Allen and others.**

Mr. Bishop, from the select committee, to whom was referred the petition of Daty Allen and others, praying for the passage of a law giving them the right of pre-emption to certain lots in the South Bay tract, in Washington county,

**REPORTED :**

That the committee have had the same under consideration, and have ascertained that the petitioners purchased the marsh lots opposite their respective farms, agreeable to the provisions of the act, chapter 254, passed April 23, 1823, and have neglected to avail themselves of the provisions of said act, as appears by the Surveyor-General's report, herewith submitted. It appears that the marsh lots opposite their farms are of little or no value to any other individuals. They are wholly useless for agricultural purposes, and of no intrinsic value, and of trifling consequence to the petitioners, except to allow them to approach Lake Champlain, by means of a canal to be cut through the marsh. The committee are therefore of opinion, that the prayer of the petitioners ought to be granted, and accordingly ask leave to introduce a bill.





**No. 196.**

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**IN ASSEMBLY,**

**March 8, 1832.**

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**COMMUNICATION**

**From the Trustees of the Capitol.**

**STATE OF NEW-YORK,**

*Albany, 7th March, 1832.*

The Trustees of the Capitol, having completed their duties under the act of the 26th April last, entitled "An act providing for the improvement of the Assembly Chamber, and repairing the Capitol," consider it their duty to submit to the Legislature the following

**COMMUNICATION.**

By the act, chapter 249 of the laws of 1830, the custody and care of the Capitol is committed to the undersigned, together with the Attorney-General, (whose absence prevents his uniting in this communication;) and they are authorised to make repairs to a limited amount, and to appoint a superintendent of the building. Pursuant to the directions of this law, the Trustees appointed Henry Weaver the superintendent, in the spring of 1830; but the officers of the Corporation of the city of Albany continued in the charge of the building, and to occupy parts of it, until the spring of 1831. When they left it, arrangements were immediately made to put the basement rooms in a situation to afford the superintendent a comfortable residence for his family; which being done, he moved into, and took charge of the building.

The room formerly occupied by the Common Council of the city of Albany, was set apart as a court room for the Court of Chancery. The Chancellor was then occupying the office in the State Hall, designed, in the construction of the new part of that hall, for the Adjutant-General; but the present Adjutant-General having signified

his desire to have the room, the Chancellor was assigned the room in the basement of the Capitol, immediately under his court room, to be used by him as an office ; which room he now thus occupies, and the Adjutant-General is in the possession of the office designed for his use in the State Hall.

In the mean time the act first above referred to was passed, directing specific alterations in the Assembly Chamber, and "such other repairs and improvements to the Capitol as they (the Trustees) may deem proper." In obedience to this act, a faithful and competent mechanic was employed to take charge of, and superintend the work in the Assembly chamber, and to keep and render to the Trustees a specific account of the expenditures. This was done, and his bills, amounting to \$515.97, appearing perfectly fair and satisfactory to the Trustees, were paid. This included the materials and the carpenter and joiner work, together with sundry ordinary repairs to the room and its furniture, and some small jobs in the basement of the building, but did not include the painting.

The Trustees further considered it not only proper, but highly necessary, to make extensive and permanent alterations and repairs in the Supreme Court room and the Chancellor's court room ; and a mechanic was employed in the same manner to make these repairs. The bills of expense for the materials, and the carpenter, joiner and cabinet work, were rendered in a manner very satisfactory to the Trustees, and were paid ; amounting, for the Supreme Court room, to \$500.04 ; and for the Chancellor's court room, to \$256.81. These bills did not include the painting to these rooms.

The painting to the three rooms was done by the same mechanic, and his bill for the whole work was presented and paid together, so that the Trustees are not able at this moment to divide the amount between the different rooms. The painting was done at twenty-five cents for each pound of paint used, which was ascertained to be the usual price paid for painting of that description. The work, in the judgment of the Trustees, was executed in a very superior manner ; and the whole bill, which included the washing and staining of the walls of the two court rooms, and the necessary glazing for the whole building, amounted to \$288.08.

The stoves in the two court rooms were the property of the Corporation of the city of Albany, and were called for to be transferred to the City Hall. This produced the necessity of supplying those

rooms with new stoves and pipe. The bill for this expenditure, including the putting up of the stoves and pipe, and rendering the building secure from fire from the stove-pipes, amounted to \$160.36, which has also been paid.

These constitute the principal expenditures which have been made by the Trustees under the act of the 26th April last. Some repairs in the basement of the building, and some to the roof, were found necessary in the course of the year; but these, together with the other ordinary repairs, have been as much restricted as a reasonable regard to the safety of the building, and the health and comfort of its inmates, would permit.

The following is a brief account of all the payments which have been made from the treasury, for account of the Capitol, from the first of January 1831, to the first day of March instant :

During the fiscal year ending on the 30th September last, there was paid as follows :

1831,		
Jan. 20.	To Heermans, Rathbone & Co. for the stove and pipe for the small room constructed in the outer hall for the doorkeeper of the Executive chamber, and for putting up the same, .....	\$32 46
Jan. 21.	To Fassett & Hallenbake, for finding the materials, and building the room for the doorkeeper of the Executive chamber, .....	52 04
April 16.	To Elias Smith, for laying a new hearth in the Chancellor's office room,.....	2 00
May 24.	To John Maher, for repairs to the roof of the Capitol, including materials, .....	34 80
July 9.	To Laughlin M'Pherson, for various repairs to the building generally, and to the park fences and gates, .....	32 25
		<hr/> \$153 05

During the current fiscal year, the following further payments have been made, to wit :

Amount brought forward,.... \$153 05

1831,

Oct. 21.	To A. Bulson, for cleaning the Chancellor's court room, and washing the walls to prepare it for the painter,.....	\$6 17	
Oct. 21.	To John Maher, for further repairs to the roof, including materials, .	11 75	
Nov. 7.	To Moses B. Depuy, for putting up ceilings and partitions in the basement rooms, repairing shed at southeast door, and several other small repairs, .....	43 87	
Nov. 16.	To Henry Weaver, for payments made for sweeping the chimneys, and for carting a mass of rubbish from the cellars, with several other small charges,....	8 38	
Nov. 28.	To Moses B. Depuy, for ceiling bedrooms, and casing a window connected with the Chancellor's office, .....	19 00	
Dec. 14.	To Solomon Hayes, for cleaning the whole building from the cupola down, .....	28 50	
Dec. 15.	To Joseph Gladding, for painting the ceilings and partition floors in the basement, and for glazing in the building generally, .....	44 77	
		<hr/>	\$162 44

The foregoing payments have all been made under the act of 17th April, 1830, as ordinary repairs. In addition to them, the following sums have been paid under the act of 26th April last, to wit:

1831. Dec. 5.	To Fassett & Hallenback, for alterations to the Assembly chamber, including materials,.....	\$515 97	
1832. Jan. 13.	To John F. Porter, for painting the Assembly chamber, the Supreme		
	Amount carried forward,.....	<hr/> \$515 97	<hr/> \$315 49

	Amount brought forward,.....	\$515 97	\$315 49
	Court room, and the Chancellor's court room, and glazing generally,.....	288 08	
1832	Jan. 23. To J. Lyman, for alterations to Supreme and Chancellor's court rooms, including materials, .....	756 85	
"	Feb. 29. To John F. Porter, for painting ing, varnishing, &c. tables and seats in the two court rooms, .....	11 87	
"	March 1. To Heermans, Rathbone & Co. for stoves, pipes, and putting up for the court rooms,.....	160 36	
		<hr/>	1,733 13

And showing the total payments from the 1st of January, 1831, to the 1st instant, inclusive, to have been..... \$2,048 62

It will be seen from the foregoing summary of the payments, that the Trustees have not, as the act of April last seems to have contemplated, drawn the money into their own hands, but they have preferred the course of having the work completed, and the accounts rendered in a manner satisfactory to them before making any payment, and then have the warrants drawn directly to the persons to whom the money was due.

The alterations of the court rooms rendered necessary the partial new dressing of the rooms, and the purchase of chairs for the rooms, and for the judges and chancellor.

Bills for the chairs which have been obtained, and are making, and which have not been paid, amount to about..... \$105 50

By the resolution of the Legislature of the 4th of January last, the Trustees were directed to procure carpets for the two court rooms. In obedience to that direction a carpet for the Supreme court room was purchased of T.

W. Ford & Son, and their bill is unpaid, amounting to 327 41  
And a carpet was purchased for the Chancellor's court room, from W. S. Shepherd & Co. and their bill is also unpaid, amounting to ..... 93 22

Amount carried forward,..... \$526 13

Amount brought forward,.....	\$526 13
The bills of the upholsterer for repairing the furniture to these rooms, and for putting down the carpets, also remain unpaid, and are, for the Chancellor's court room, \$50.44, and for the Supreme court room, \$174.13, in all,.....	224 57
Showing an expenditure, beyond the payments before given, of.....	\$750 70

Some part of these bills the Trustees had concluded to assume the responsibility of paying under the law of 26th April last, as they considered the repairs to the furniture of the court rooms, as within the provision of the act for repairs to the Capitol, and though they had some doubt whether the purchase of the chairs could be technically embraced, yet finding them, or some other description of seat, indispensably necessary, they were purchased and contracted for with the expectation of making the payment by the authority of that law. Still, as the carpets have been procured by the direction of the resolution of the Legislature referred to, and as a law is to be passed which will authorize the Comptroller to draw his warrant for the payment, as well as for the expense of making and putting them down, the Trustees respectfully suggest that it may be well to include in the same provision, the other outstanding bills before enumerated, and thus to supersede the necessity of acting upon such a construction of the law of the last session, as may admit of doubt or question.

This closes the communication so far as it relates to the past acts of the Trustees of the Capitol. But they consider it a farther duty to avail themselves of this occasion to suggest to the Legislature what they think will be required for the coming year, to protect the interests of the State in this property. The Capitol was found by the trustees when they first assumed the possession of it, in many respects, in a bad condition. The roof, upon examination, requires permanent repairs to a considerable extent, to secure the rooms from being flooded with water, and the plastering and walls from destruction. Temporary repairs to prevent these leaks have been repeatedly tried during the past season, but they have not been successful. The area of wood around the cupola must be carefully sheathed

with lead or copper, and the trustees have already directed lead to be procured for this purpose.

Most of the rooms, with the exception of those occupied by the Governor, the Legislature, the courts and the library, are in a very bad condition, and require some repairs, together with additions of furniture, to render them fit for occupation by the committees of the Legislature, the use for which they are supposed to have been originally designed. The executive chamber itself demands, to a considerable extent, re-furnishing, and the carpet, especially, must be renewed, before another annual meeting of the Legislature.

The grounds about the Capitol are at the present time in a worse condition than the Capitol itself. Several parts of the park fence were blown to the ground by the winds during the last summer, and the whole has become so entirely rotted as to render repairs nearly useless. The trustees are fully satisfied that an entire new fence in the course of the present season will alone prevent this park from becoming an open common. The condition of the gate and gateways is daily under the observation of the members of the Legislature, and the Trustees need only to say, that they are favorable samples from which an opinion may be formed as to the present state of the whole fence.

No estimates have been obtained as to the cost of the construction of a new fence, similar to the one now enclosing the Capitol park, nor indeed, are the Trustees able to state, with any precision, what will be the expense of enclosing these grounds with any description of fence. The fact, however, is palpable, that a new fence of some sort, must be built, and, under this conviction, they feel bound to inform the Legislature, that they have been advised that measures are taken by the corporation of the city to reduce and level the academy park, and to surround it with a plain substantial iron fence; that when that improvement is progressed in, it will render necessary the reduction of the capitol park upon Washington-street, and that there is a strong desire in the city, that the State, in enclosing its park, should authorize the adoption of some plan by which the two public squares, situated side by side, as they are, may be made to possess an uniformity of appearance, and one which shall be creditable to the city and the State. The subject of ornament as connected with this public work, is one appropriately confined to the jurisdiction of the Legislature only, and the Trustees

would not consider it becoming in them to remark upon it. The only question they wish to discuss, is that of economy to the treasury, and security to the Capitol and the grounds around it. The construction of an iron fence must involve three items of expenditure, rather separate from each other. The first is the sinking of a suitable trench upon the line of the proposed fence, and filling it with a wall of ordinary mason work, raised sufficiently above the surface of the ground, and to the proper levels, to receive the coping stone. The second is the coping stone, which must be of marble, or some other firm cut stone, of sufficient width to cover the top of the wall, of sufficient thickness to sustain the fence, and properly drilled to receive the irons of which the fence is to be composed. And the third is the iron, and the fixing it in its place, to constitute the fence.

The coping stone properly prepared are said to constitute at least one-fourth of the whole expense of such a fence, and it has suggested itself to the Trustees that, should the Legislature come to the determination to construct an iron fence, it would be expedient to insert provisions in the bill requiring the Agent of the State Prison at Mount-Pleasant to furnish these stone, upon the order of the Trustees, or of the persons in whose charge the construction of the fence shall be put. In this way the cost of the coping stone to the State would only be the support of the convicts who should quarry and cut them, and the transportation.

The Trustees have not the information necessary to a correct comparison between the cost of the iron fence and of an ordinary fence constructed of wood, from which comparison only, accurately made, can a correct opinion be formed, as to the economy of the one course or the other, for enclosing these grounds. Still they have been inclined to believe, from such information as they have casually collected, that it will cost the State less money to build and maintain a substantial fence around this park, by making the structure at once firm and durable, than by attempting to do it in a temporary manner ; as it should be borne in mind that the State, in the contract with the corporation, has bound itself to keep this ground forever a public park. These fences are in a situation of entire exposure, both to the weather and to accidents and injuries, and unless durability of material and great strength are united in their construction, it can not be reasonably expected that the same fence will last but a few years at most. The constant necessity for repairs and the frequent



repetitions of entire new building would, in the opinion of the Trustees, in a short term of years take more money from the treasury than will be required to build the fence proposed.

These, however, are mere suggestions thrown out for the consideration of the Legislature, as the subject is one upon which the members of that body possess equal advantages with the undersigned to form correct opinions, and the determination rests solely with them.

No provision now exists for clearing the walks around and within the park from snow and ice, in the winter season, or for obeying the ordinances of the corporation in relation to the care of the streets at any season of the year. An appeal has been made to the Trustees, during the present session of the Legislature, growing out of a penalty imposed upon the Superintendent of the Capitol, for a neglect of one of these ordinances, which requires the possessor of property to clear the walks adjoining it. The complaint related to the walks out side of the fence, and where the Trustees did not expect that the Superintendent, without compensation, would undertake this duty. It is also believed that the experience of the present winter has shown to every member of the Legislature the necessity of some more systematic arrangement, by which the walks, as well within as on the outside of the enclosure, should be kept in a condition to be passed with comfort and safety. What portion of this duty should be imposed upon the superintendent of the building, as a consideration for his house room, is a question which the Legislature may properly consider; but the Trustees have believed that if this agent kept the halls of the Capitol clean and in order, cleared the front steps and the walks immediately adjoining the building in front, and attended to the necessary supervision of the building itself, he would render to the State at least a full equivalent for the privileges he enjoys, under the present arrangement between him and the Trustees, and whether it is beyond that point, the Legislature will determine. They do not believe it would be equitable to him to require that he should be charged with the labor or expense of clearing the two long walks through the park, and much less that he should be held responsible, without compensation, for the care of the extensive side walk around the park, and for the proportion of the adjoining streets. With a proper compensation for the expense, he may be the person most conveniently located to perform these duties, but without a compensation the Trustees are apprehensive that

no individual can be found who will accept the house room occupied, as an equivalent for the service to be rendered. They, therefore, recommend this subject to the attention of the Legislature, as necessarily connected with any bill they may think proper to pass in relation to the Capitol, and the grounds connected therewith.

The foregoing relation of the payments for ordinary repairs, within the current fiscal year, will have shown the means at the command of the Trustees for any future calls, but it may not be amiss to recapitulate, that no misapprehension may be entertained upon this point. By the law of the 17th April, 1830, the Trustees are authorised, "from time to time to cause such repairs to be made as may be necessary for the preservation of the Capitol," but the amount to be thus expended in any one year, is not to exceed two hundred dollars. It has been seen that \$162.44 have been already expended since the first of October last, the commencement of the present fiscal year. Hence but \$37.56 remain within the power of the Trustees until after the 30th September next. It will, therefore, be fully apparent that unless the Legislature act upon the subject, this property must remain in its present situation substantially, for the residue of the present year; and that even repairs now known to be required to the roof, to prevent the introduction of water at every shower into the supreme court and other rooms, can not be made upon the strength of this appropriation.

The law of the 26th April last will be found to have been limited in its duration, to the meeting of the present Legislature, and therefore, no expense, not incurred before that period, can be paid under that law. The consequence is that, without further legislation, the powers of the Trustees, as to the preservation and protection of this property, until the commencement of the next fiscal year, will have been fully expended, when the further sum of \$37.56 shall be paid out; and after that period their powers, for the succeeding year, will only extend to the expenditure of two hundred dollars.

All which is respectfully submitted.

*Dated Albany, 7th March, 1832.*

SILAS WRIGHT, JR.  
A. C. FLAGG,  
E. T. THEROOP,  
EDW'D P. LIVINGSTON,  
CHA'S L. LIVINGSTON.

**No. 197.**

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**IN ASSEMBLY,**

**March 7, 1832.**

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**REPORT**

**Of the committee on trade and manufactures, on the bill entitled "An act to amend the Revised Statutes, regulating the inspection of flour in the city of New-York."**

**Mr. Seymour, from the committee on trade and manufactures, to which was referred the bill entitled "An act to amend the Revised Statutes, regulating the inspection of flour in the city of New-York,"**

**REPORTED :**

**This bill, introduced on notice, proposes a very material alteration in the law regulating the inspection of flour. No petitions on the subject have been presented, either for or against the measure ; and the committee have, therefore, had no direct expression of the wishes or opinions of those more immediately interested in the question.**

**It appears, however, that this subject has been brought before several preceding Legislatures, and undergone considerable investigation. Various petitions and remonstrances were then presented, from different sections of the State. To these papers, and the several reports on the Journals, your committee have referred, before coming to a conclusion on the propriety of the amendments to the law embraced in the bill now under consideration.**

**That part of the Revised Statutes regulating the inspection of flour, was passed upon the most mature deliberation, and met the approbation of the manufactures and dealers generally. By its provisions, the desirable object of giving a high and permanent character to the principal staple of our State, was supposed to be attained ; and so far as the committee can judge, these expectations have been**

fully realized. The great majority of the manufacturers of flour, and of the merchants dealing in the article, appear to concur in this opinion. The reputation of New-York flour stands high, both at home and abroad ; and no complaint is made that injustice or delay have resulted from the operation of the existing law. Under these circumstances, the committee can scarcely conceive of any good reason for interfering with the law as it now stands. The trite but correct adage, that it is "best to let well alone," applies to matters of legislation as to all others, and as it is thought, with peculiar force in the present instance.

The present law provides for the appointment of one inspector of flour in the city of New-York, who is authorised to employ as many deputies as the prompt despatch of business requires, and for whose conduct he is responsible. As this system has been found to operate satisfactorily to those more immediately interested, and has served to elevate the character of our flour, and give stability to its high standard, it may well be doubted whether a division of responsibility, as proposed in the bill, by the appointment of flour inspectors having concurrent powers, would not prove detrimental to the reputation of the most important staple of the State. That it would prove so, is the opinion of the committee ; and they submit, that at all events, it would be unsafe to abandon a tried and approved law, against which there is no complaint, for the purpose of enacting a substitute which is at least of doubtful utility.

It has been urged, that the appointment of the inspectors, who actually perform the most of the labour, should be in the hands of the Governor and Senate, and not of a General Inspector. The committee is of a different opinion. They believe that it is better to have a competent head to every inspection department, who shall be responsible for the acts of his deputies, and who will of course scrutinize more narrowly into their character and qualifications, than the Executive could possibly do.

Believing that the existing law on the subject of the inspection of flour is wise in its operations, the committee are opposed to the bill referred to them, and they accordingly recommend that it be rejected.

**No. 198.**

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**IN ASSEMBLY,**

**March 7, 1832.**

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**REPORT**

**Of the minority of the committee on trade and manufactures, relative to the inspection of flour and meal in the city of New-York.**

Mr. Morgan, from the minority of the committee on trade and manufactures, to whom was referred a bill to alter the mode of inspecting flour and meal, and the number of inspectors, introduced on notice by Mr. Varian,

**REPORTED :**

That the said bill was under consideration several times, and a majority of the committee was of opinion that the bill ought not to pass ; they therefore came to the conclusion to report against said bill. A minority of the committee was of opinion that it would have a beneficial effect to pass said bill, and to reduce the fees for inspection ; and beg leave to give the following reasons for their opinion :

1. The Inspector General is the only one, under the present law, appointed by the Governor and Senate. He appoints his deputies ; and although he may select fit and suitable persons, still, with his interest so much at stake, it is evident he will select such as will serve for the lowest pay. By dividing the office, the Governor and Senate would have the selection from numbers of practical and experienced men ; and there would be an appeal where persons felt themselves aggrieved, where, as in the present law, there is no appeal.

2. The standard of inspection in the city of New-York is now lower than in any part of this State, or of Philadelphia or Baltimore. To prove this, it is only necessary to state, that western flour at this

day is 75 cents per barrel more than New-York; Baltimore, from 12½ to 62½ cents per barrel more, and Philadelphia the same; evidently showing that the dealers in and round New-York pass off on the public flour of an inferior kind for superfine, which is at least 75 cents less in value than the western brands, and in proportion as above stated of other kinds.

From the returns made this year by the Inspector General, it appears that he has received, clear of all expenses, the sum of \$7,197.82; a sum far beyond what any officer of the State government receives, and a sum much larger, in the opinion of the committee, than any one man ought to receive for services of so little value. In addition to his pay, it has become a custom to give to the inspector the flour drawn from the barrel by the inspector's auger. This item, when viewed superficially, seems of small account; but take one million of barrels, and extract one-eighth of a pound from each barrel, and you find the total 125,000 pounds, or 637½ barrels; and it gives an item which will support any reasonable man for a year.

Under these impressions, and feeling a responsibility to the community to curtail all extravagant fees or emoluments of office, the minority ask leave to introduce a bill, to lower the inspection fees on flour and meal in the city and county of New-York, and to divide the office.

**No. 199.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**REPORT**

**Of the select committee, on the memorial of the Trustees of the Seamen's Fund and Retreat, of New-York.**

**Mr. Morgan, from the select committee, consisting of the delegation attending this House from the city and county of New-York, to whom was referred the memorial of the trustees of the Seamen's Fund and Retreat,**

**REPORTED:**

**That they have had the said memorial under consideration, and after examining the laws and reports in relation to this subject, with all the care so important a subject as the welfare and support of sick and disabled seamen demands of us, beg leave to submit the following remarks for the consideration of the honorable the Legislature of the State of New-York.**

**It appears that for many years the seamen sailing out of the port of New-York, have been taxed certain sums of money each, for every voyage, which has been paid into the hands of the Health Commissioners of the said port, and expended by them, and by yearly grants of the Legislature to other institutions, not connected with seamen; they are also taxed twenty cents a month by the United States, which has been expended under the orders of the President, by the Secretary of the Treasury of the United States.**

**In April last the Legislature passed an act, investing in a board of trustees, (styled the Trustees of the Seamen's Fund and Retreat,) in New-York, the power to collect and to take care of all sick and disabled seamen. Under this act, and from this board of trustees, the present memorial is sent to us for consideration and aid.**

Your committee deemed it necessary to call for information from the trustees, of their proceedings for the term of service they have performed ; and on application to the Comptroller of the State, have received a copy of their account current, signed by the President and Secretary of the Seamen's Fund and Retreat, and a copy of the report to the Comptroller. (Doc. Nos. 1 and 2, annexed.) From these documents and memorial it will appear, "that the trustees have purchased a farm on Staten-Island, erected a building capable of containing ninety seamen, and are now erecting a brick hospital, which will hold one hundred and fifty in addition to what is now accommodated. Their farm is well stocked, and is progressing in improvements rapidly."

Owing to the severe cold weather setting in early in December, the trustees, who had progressed so far as the third story in the brick hospital, and on which they had expended near \$3,000, were reluctantly compelled to suspend their further progress in the erection of this hospital. At the same time, the unusual severity of the winter drove frost-bitten seamen in crowds to the care of the trustees. Having only room for ninety, they were compelled to board them at the city hospital, and pay three dollars per week for the same.

In addition, the small-pox has prevailed to a great extent among seamen the last fall, and the trustees not having had time to erect a small-pox hospital, have been compelled to board such patients at the Bellevue hospital.

In January a sudden thaw took place, and during a severe gale the new hospital was blown partly down ; owing, probably, to the mortar suddenly freezing, instead of hardening, in the early part of December.

From the above causes, and also from having provided partially the beds and furniture for the new building, the trustees find themselves with a fluctuating number of seamen, from 100 to 120, at this inclement season of the year, destitute of funds to proceed, and now ask relief.

Your committee will therefore suggest the following ways and means to accomplish that object, viz : relieve the trustees from paying to the Health Commissioners the board debited to them since 1st May last, and what may become due for the summer of 1832, for seamen detained at quarantine by the health laws.



**It is proper to increase the number of elective ship masters, the ex officio members being gentlemen in office, which occupies all their time, imposes on the elected trustees nearly all the duty ; and it is thought proper to add two more to the number of trustees.**

**Your committee are of opinion that with the aid proposed, the trustees, after the completion of the hospital now erecting, will be able to maintain and support all seamen entitled to their care, out of the moneys collected from seamen, and will not in future find it necessary to apply for legislative aid. Under this impression, they have prepared a bill, and ask leave to introduce the same.**



# DOCUMENTS.

## No. 1.

*Statement of the funds of Seamen's Fund and Retreat, from May to 31st December, 1831, inclusive.*

DR.

May 19th.	To cash received from Comptroller of the State of New-York,	\$12,197 68
June 3.	do collector of port of New-York, collected during month of May, 2½ per cent being deducted for collecting, .....	2,116 72
July 8.	Cash rec'd from the same for June, with the same deduction,	1,966 33
Aug. 4.	do do July, do	1,774 01
Sep. 13.	do do Aug. do	2,121 11
Oct. 3.	do do Sep. do	2,232 51
Nov. 7.	do do Oct. do	1,661 16
Dec. 10.	do do Nov. do	1,567 80
" 28.	do do Dec. do	1,357 44
do	do received from the physician at the quarantine, collected of coasting vessels,	233 00
		<hr/>
		\$27,227 76
Cash due A. Thompson and others for note lent to trustees and discounted at Manhattan Co.....		1,500 00
		<hr/>
		\$28,727 76

CR.

By real estate,.....	19,466 72
“ personal property,.....	3,124 84
“ expense account,.....	1,681 68
“ cash paid city hospital for board of sick seamen,.	231 43
do health commissioners, for do ....	1,456 59
do paid interest on A. Thompson and oth- ers' note,.....	22 75
	<hr/>
	\$25,984 01
do in Seamen's Savings Bank, \$1,382 78	
do due from Jas. Morgan,....	360 57
do due from H. Russell, Chr.	1,000 40
	<hr/>
	2,743 75
	<hr/>
	\$28,727 76

JAS. MORGAN, *Secretary.*

## No. 2.

Hon. SILAS WRIGHT, Jun.

*Comptroller of the State of New-York.*

SIR,

In compliance with the provisions of an act passed April 22d, 1831, making it obligatory on the trustees of the Seamen's Fund and Retreat to report to you their proceedings on the first Monday of January in each year : We, therefore,

**RESPECTFULLY REPORT :**

That in May last, the trustees named in the act, met at the mayor's office, and elected five ship masters as the additional number of trustees. On a second meeting in May, Sam'l Swartwout, Esq. was president, and Capt. James Morgan, their Secretary; on organizing they drew from the Comptroller of the State twelve thousand one hundred and ninety-seven dollars sixty-eight cents, being the amount in his hands of funds denominated the mariner's fund, and by the act of 22d April, 1831, placed under the care of the trustees of the seamen's fund, for the benefit of seamen.

In the month of June, the trustees purchased a farm on Staten Island, (county of Richmond) of nearly thirty-eight acres, with a water right of five hundred feet into the bay. The farm is bounded in front by the bay of New-York, stands on a high and commanding bluff, in full view of the city, and of all vessels entering or leaving New-York, by the way of Sandy-Hook. The land is said to be good; we have sunk two wells which produce abundance of pure water. The deeds of this property have been taken in the name of the people of the State of New-York, and we have paid the sum of ten thousand dollars for the same. Our secretary will hand you the deeds with his account.

After purchasing the farm, contracts were entered into for building a wharf 130 feet in length by 20 feet wide, which is now finished; cost, \$1,000; also, for a house, barn, out-houses, &c. cost as per account, current. The house has been finished, furnished, a physician, nurses, and other attendants provided for the seamen, and on the 1st day of October, 1831, it was opened for the reception of the sick:

From 1st Oct. 1831, until 30th Dec. 1831, there has been received	
at the seamen's retreat,.....	167 men.
There has been discharged, cured,.....	78
At their own request discharged, relieved,.....	8
do do uncured,.....	4
Left on a visit, not returned, .....	1
Died at the retreat,.....	5
	— 96

There is now remaining in the retreat,..... 71 persons, besides which there is a large number in the city hospital, several at Bellevue, with the small pox, and one at the lunatic asylum, all at the expense of the trustees. The United States refuse

to pay for sick seamen, after they have been in the city hospital four months, and the governors of the hospital have demanded from us, and we have paid for their maintenance after the four months run out on the United States' account.

Shortly after the retreat was opened, it was found necessary to enlarge or erect more buildings for the accommodation of seamen applying for admittance; the present house is built of wood, and will lodge about ninety persons; the trustees therefore contracted for a brick building 76 feet long and 30 feet wide, to be surrounded with piazzas, three stories in height, and calculated it to hold 150 persons. This building was to have been finished on the 1st of Jan. 1832, but owing to the cold weather in December, it has not been finished. The trustees, on the completion of this hospital, will be able to receive 240 seamen, a number larger than they expect to be called on for some years to come, to receive into the retreat.

During the months in which vessels are subject to the quarantine laws, the trustees agreed to pay to the health commissioners three dollars per week for seamen and four dollars per week for masters and mates. This was what was demanded, and we were compelled to comply. From our own expenses, since the retreat has been opened, we are of opinion that the price of board paid by us to the health commissioners ought to be reduced in the succeeding years.

The trustees also report that a correspondence has been opened with Hon. L. M'Lane, Secretary of State of the United States, relating to the 20 cents per month paid by seamen to the United States; as yet, this has not been brought to a close. But the trustees are so well convinced of the propriety and advantages that will accrue to seamen by their having one hospital exclusively appropriated to themselves, that they anxiously look forward to the completion of this object, so that all moneys paid by seamen may be placed in the hands of one set of men, and disbursed by them for seamen only. Should this be accomplished, the State of New-York may justly claim the honor of being the first in the Union that has stepped forward and provided a retreat for her sick and worn-out mariners.

During the summer, fall, and winter months, a committee of the trustees have visited the retreat from one to seven times in each week, and have had a strict supervision over the establishment, and over all purchases made. Great gratitude has been in all cases manifested by the patients towards the trustees, and the physician, Dr. P. S. Townsend, of the retreat, for kind treatment, and the care taken of them while in the hospital. In cases which have terminated fatally, the minister of the village at the quarantine has been in attendance, and he has also attended each Sunday since October, and often when requested at other times.

During the cold weather in December, large numbers of frosted seamen were admitted, and 9 were received from one ship with severe cases of *scurvy*. Impressed with the importance of the trust confided to them, the trustees, to obviate delay in giving immediate relief, have in contemplation to open a receiving house in New-York, where cases will be attended to by four physicians and surgeons, gratis, eight gentlemen having volunteered their services.

It appears from the books of the trustees that there has been received from all sources from the 1st of May 1831, to the 30th Dec. 1831,..... \$28,727 76  
 And expended for land, buildings, and other purposes, 25,984 01

Leaving in possession of the trustees,..... \$2,743 75

There is also outstanding bills which will be called in and settled as soon as possible.

For any information which you may require, we respectfully refer you to the secretary in Albany, who has with him the accounts and vouchers of our disbursements.

All of which is respectfully submitted, by order of the trustees.

JAS. MORGAN,

*Secretary of Board of Trustees of the  
 Seamen's Fund and Retreat, New-York.*

*New-York, Dec. 30th, 1831.*

**No. 200.**

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**IN ASSEMBLY,**

**March 13, 1832.**

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**REPORT**

**Of the Commissioners of the Land-Office, on the petition of David Haines.**

**The Commissioners of the Land-Office, on the petition of David Haines, referred to them by the honorable the Assembly,**

**RESPECTFULLY REPORT:**

That in 1816 a petition of similar import was presented to the Legislature, and referred by the Assembly to the Surveyor-General, who made a report thereon, which does not appear on the printed Journals of the Legislature, a copy thereof is, therefore, inserted in this report. It is as follows:

“ That the petitioners state that they, with many others, are settled on lands which they suspect to be a gore between the great Hardenburgh and Minisink patents; that the persons from whom they have purchased, pretending to be the owners, refuse to give them any other than quit claim deeds; and apprehensive that such titles may not be secure, the petitioners pray that an investigation may be made to ascertain whether said lands do not belong to the State; and if so, that they may receive grants from the State: this seems to be the purport of the petition. The Minisink patent, granted to Mathew Ling, Ebenezer Wilson, and others, on the 28th August, 1704, has its northern bounds described thus:

“ ‘ Beginning at a certain place in Ulster county aforesaid, called Hunting-House or Yagh-House, lying to the north-east of the land called Basher-Land, thence to run west by north, until it meet with the Fishkill or main branch of Delaware river.’

[A. No. 200.]

“The great Hardenburgh patent, granted to Johannis Hardenburgh and others, on the 20th April, 1708, has its southern bounds thus described :

“ ‘ Beginning at the Sandebergh or Hills at the north-east corner of the lands granted to Ebenezer Wilson, Dirck Vandenberg, &c. at Minisink, so running all along their line north-westerly, as the said line runs, to the Fishkill or river.’

“It is a well established fact that the places known by the name of Sandebergh and Yagh-House are several miles apart from each other. The former is the place of beginning of the Hardenburgh patent, and the latter of the Minisink patent; and were it not for the words in the Hardenburgh patent ‘so running all along their line,’ that is of the Minisink patent, there would be no doubt of the existence of the gore alledged in the petition: but this part of the description favors a contrary interpretation, and accordingly it appears from the map of the Hardenburgh patent, that it has been partitioned among the proprietors thereof. Whether there has ever been a solemn investigation of this question the Surveyor-General is not informed.”

The committee to whom this report, together with the petition, was referred, reported “that they concurred with the opinion of the Surveyor-General,” (see Assembly Journal of 1816, page 570.)

As it is probable that the petitioner has considered this as not a decisive answer to his prayer, the Commissioners of the Land-Office would, in order to prevent a repetition of similar applications, respectfully recommend, that the Legislature give an explicit expression of its views respecting the subject matter of the petition. The Commissioners of the Land-Office have nothing to add to the facts and inferences contained in the Surveyor-General’s report and the documents which accompany the petition.

Respectfully submitted.

March 13th, 1832.

SIMEON DE WITT, *Surveyor-General.*

SILAS WRIGHT, JR. *Comptroller.*

A. KEYSER, *Treasurer.*



**IN ASSEMBLY,**

**March 10, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the town of Plato, in the county of Cayuga.**

**The select committee, to whom was referred the petition of sundry inhabitants of the town of Plato, in the county of Cayuga, to change the name of said town,**

**REPORT:**

**That they have had the same under consideration, and it appears that on the 26th day of April last, the town of Locke, in the county of Cayuga, was divided, and the new town was called Plato, which name is repulsive to the inhabitants of said town, and that the only post-office in said town is named Summer Hill, by which name your petitioners want their town to be called.**

**Your committee are unanimous in the opinion, that the prayer of the petitioners ought to be granted, and have ordered their chairman to ask leave to introduce a bill.**



**No. 202.**

**IN ASSEMBLY,**

**March 14, 1832.**

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**COMMUNICATION**

**From W. P. Hallett, Clerk of the Supreme Court in  
the city of New-York.**

**SUPREME COURT CLERK'S OFFICE,  
*New-York, March 10, 1832.***

**To the Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.***

**SIR,**

I have the honor herewith to transmit to you, in obedience to a resolution of the Honorable the Assembly, a full statement of the receipts and expenditures of this office, during the months of November and December, 1830. Not having kept an account for the year 1831, I have requested my deputy to make an estimate thereof, which is herewith enclosed, and which I believe to be as correct as it is possible to ascertain the same. The estimate embraces the whole business of the office, without deducting any losses or charges on the books.

Prior to November, 1830, I am unable to render any account; as I was not appointed Clerk until that period.

I am, with great respect,  
Your obedient servant,  
**W. P. HALLETT.**



***Estimate of Receipts and Disbursements of WILLIAM P. HALLETT, Esq. Clerk of the Supreme Court in the City of New-York, from the 9th day of November, 1830, to the 31st day of December, 1831, inclusive.***

**1830.**

**DR.**

Received in the month of November, . . . . .	\$140 73	
do do December, . . . . .	244 99	
		<b>\$385 72</b>

**CR.**

Disbursements for the month of November, . . .	\$80 23	
do do December, . . .	92 99	
By balance, . . . . .	212 50	
		<b>\$385 72</b>

**1831.**

**DR.**

Searching for judgments has been generally sufficient to keep one clerk constantly employed; at times, has been heavy for a few days. Fees for searching, 10 cents per year. The average time in making a search for ten years, is 1 hour and 30 minutes. There being no possible means of ascertaining the actual amount received, I have supposed the amount to be \$2,100 00

The number of judgments entered up in this office for the year 1831, is 1,206; from the sealing of the writ to the docketing of judgment, I allow \$1, . . . . . 1,206 00

Copying, and other incidental business, say .	400 00
Satisfaction pieces filed, at 66 cents each, . . .	152 00
Filing and entering returns of writs, &c. . . . .	250 00
Fees received as clerk of the circuit, . . . . .	375 00

**\$4,483 00**

**CR.**

Clerk hire, . . . . .	\$1,680 00
Stationary, and bills paid for fitting up office, &c.	400 00
By balance, . . . . .	2,403 00

**\$4,483 00**

Very respectfully,

Your obedient servant,

W. P. HALLETT, *Clerk.*

To the Hon. CHARLES L. LIVINGSTON, *Speaker.*

N. B. This estimate embraces all the business of the office, much of which is still due in small sums, and charged on book.



**No. 203 .**

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**IN ASSEMBLY,**

**March 14, 1832.**

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**COMMUNICATION**

**From James Porter, Register in Chancery, in compliance with a resolution of the Assembly, of 8th February.**

**REGISTER'S OFFICE,  
Albany, 14th March, 1832. }**

**To the Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.***

**SIR—**

**I herewith transmit to the honorable the Assembly, the enclosed statement in compliance with the request in the resolution of that body of the 8th of February last.**

**With great respect,**

**I am your ob't serv't,**

**JA'S PORTER.**





# REPORT, &c.

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The Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.*

In compliance with a resolution of the Assembly of the 8th day of February, 1832, requesting me to report a full statement of all the legal fees received by me as Register of the Court of Chancery, during the years 1830 and 1831, together with the disbursements and losses connected with said office, I have the honor to state, that I have devoted what time I have been able to spare from my official duties, since the passage of the resolution, in possessng myself of the facts necessary to enable me to give the required information.

With the aid of my clerks, I have just completed an examination of every paper, order and entry that has been filed or entered in my office for six months, immediately preceding the first day of January last, and have estimated my fees thereon, as allowed by the present fee bill, which in the aggregate amount, as nearly as can now be ascertained, (exclusive of my commissions on receiving, investing and paying out the moneys of the court, which have passed through my hands during that period,) to the sum of,.. \$1,872 11  
And those commissions amount to ..... 48 72

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Making in all,..... \$1,920 83  
The disbursements incurred and actually paid by me for  
clerk hire, stationary and fuel during the same time  
amount to about. .... 782 63

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Leaving a balance-of ..... \$1,138 20  
More than two-thirds of this amount is yet unpaid, and remains due in small sums from professional gentlemen scattered all over the State.

What losses I shall sustain, or expenses will be incurred in the collection of the same, I have no means of ascertaining with accuracy; but that the loss, as well as the expenses of collecting, will be very considerable, must be evident to all. I make this communication, embracing but six months of the time specified in the resolution, (and which I consider a fair average for the whole period,)

for the reason that it would not be in my power to make the examinations necessary to enable me to report for the entire two years, until near the probable termination of the present session of the Legislature.

The annexed Statement, which has been made out with care, and as much accuracy as is possible, in relation to the past concerns of my office, will show the items which form the basis of the preceding report.

With great respect,

I am your ob't serv't,

JA'S PORTER.

**STATEMENT of Register's Fees, on the business of his office, from the first of July to the thirty-first of December, one thousand eight hundred and thirty-one, inclusive, being six months.**

Filing papers, entering and copying special orders and decrees, about .....	\$708 60
Entering and copying common orders, reading and marking papers before the Chancellor and V. Chancellor, about .....	234 71
Entries in Register's minutes of causes, sealing and entering award of process, .....	56 86
Entries in Vice-Chancellor's minutes of causes, sealing and entering award of process, .....	6 81
Filing notes of issue and entering causes on Chancellor's calendar, .....	25 40
Filing notes of issue and entering causes on Vice-Chancellor's calendar, .....	4 00
Drawing recital and enrolling decrees, &c., about, ....	150 00
Entering appearances and taking papers to court, about, .....	19 15
Exemplifications and certificates, about, .....	156 00
Copying papers other than orders and decrees, searches and filing mortgages, about, .....	250 00
Receiving and entering returns of commissions, and giving notice, about .....	7 00
Docketing decrees, sending transcripts to clerks and recording proofs of will, &c., .....	24 08
Drawing about one-third of all orders and decrees, ....	227 00
For entering the receipt of moneys paid into court, putting the same in the bank, and entering the same in my bank-book and in my accounts with the court, and for all fees received or charged for services rendered under the eight succeeding items in the Register's fee bill, relating to the receiving, paying out and investing the moneys in the court, .....	48 72
For taking affidavits in court, probably, .....	2 50
	<hr/>
	\$1,920 83

**Disbursements.**

For clerk hire, about .....	\$672 63
Stationary, about .....	100 00
Fuel, about .....	10 00
	<hr/>
	\$782 63
	<hr/>
Balance, .....	\$1,138 20



**IN ASSEMBLY,**

**March 8, 1832.**

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**REPORT**

**Of the select committee, on the petition of the citizens of the village of Malone, in the county of Franklin.**

**Mr. Spencer, from the select committee, to which was referred the petition of the citizens of the village of Malone, in the county of Franklin, praying for the passage of an act to organize a fire company in said village,**

**REPORTED :**

**That they have had said petition under consideration, and report the following facts : that the legal notices have been published according to law, that they have purchased a fire engine and intend to furnish themselves with other necessary implements for the extinguishment of fires, and that your petitioners are respectable citizens.**

**Your committee are of the opinion, that the prayer of the petitioners ought to be granted ; they have therefore prepared a bill, which they have instructed their chairman to ask leave to introduce.**



No. 205.

**IN ASSEMBLY,**

**March 14, 1832.**

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**COMMUNICATION**

**From the Comptroller, relative to the claim of John  
Jacob Astor.**

**COMPTROLLER'S OFFICE, }**  
*Albany, 14 March, 1832. }*

**The Hon. CHARLES L. LIVINGSTON,**  
*Speaker of the Assembly.*

**SIR—**

**May I ask you to lay before the honorable the Assembly, the  
communication herewith transmitted, relative to the claim of John  
Jacob Astor upon the State, arising under the acts, chap. 302, of  
1827, and chap. 260, of 1828?**

**With great respect,**

**I am your obedient servant,**

**SILAS WRIGHT, JR.**





## **COMMUNICATION, &c.**

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**STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }**

The Comptroller having been called upon by the agent of John Jacob Astor, to issue to him the stock authorised to be issued by the act entitled "An act to extinguish the claim of John Jacob Astor and others, and to quiet the possession of certain lands in the counties of Putnam and Dutchess," passed April 16, 1827, respectfully asks leave to make to the Legislature the following

### **COMMUNICATION :**

The several communications from the Governor to the Legislature, and the reports from the Attorney-General, transmitted therewith, relating to this subject, have kept that body advised of the progress of these litigations, and the last report of the Attorney-General, bearing date on the 22d day of February last, and communicated to the Legislature by the Executive message of the 25th day of the same month, has given the information that he considered the litigations finally closed, at least so far as the State could have any interest in prosecuting them, under the provisions of the law above referred to, and of the act entitled "An act to revive and amend an act entitled 'An act to extinguish the claim of John Jacob Astor and others, and to quiet the possession of certain lands in the counties of Putnam and Dutchess,' passed April 16, 1827," passed April 19, 1828." This report of the Attorney-General has also communicated to the Legislature the information that the three suits carried to the supreme court of the United States, by writs of error, have been decided against the defendants in the suits, both as to the question of title to the lands and as to the claim of the tenants to compensation for their improvements upon the lands, before they could be dispossessed.

A reference to the act of 1827 will show, that, by that act, five suits in ejectment were required to be prosecuted to judgment, in the circuit court of the southern district of New-York, and the act proceeds, "And the judgments in the said *five* suits, respectively,

shall be presented, by writs of error, to the supreme court of the United States, for review and final determination : and the judgment and decision in any three of said five suits in favor of the plaintiff shall be decisive in favor of the title of the said John Jacob Astor, and those claiming under him, or his heirs or assigns, to the amount of stock herein directed to be issued as aforesaid." A technical compliance with this act has not yet been had, as will be seen by the report of the Attorney-General last referred to, as but *three* of the suits have been prosecuted to judgment or presented to the supreme court of the United States, by writs of error. Still the judgment and decision of that court in the three suits which have been so presented, has been uniformly in favor of the plaintiff, which three judgments, so given, are, by the language of the act, "decisive in favor of the title of the said John Jacob Astor, and those claiming under him," to the amount of stock which he now demands. It would be to no purpose, therefore, that the State should prosecute the two remaining suits, even if recoveries in both should be had in favor of the defendants, and the supreme court of the United States, upon writs of error, should sustain those recoveries.

Yet it may well be doubted whether the Comptroller, without legislative authority and direction, can issue the stock, until the *five suits* shall have been prosecuted to judgment and finally determined by the supreme court of the United States, upon writs of error. He, therefore, respectfully asks the Legislature to instruct him upon this point.

There are other questions to be settled before the Comptroller will feel himself authorised to issue this stock, such as the regularity and conformity with the provisions of these two acts, of the stipulations and conveyances required to be executed by Mr. Astor and others ; the character of the evidence given upon the trials of the three suits which have been tried, in reference to the last proviso of the first section of the act of 1827, and to the provisions of the fourth section of the act of 1828 ; the propriety of the manner in which the question of improvements was presented to the court for determination, as compared with the provisions of the sixth section of the act of 1828 ; and the sufficiency of the evidences of the final judgments and decisions of the three suits in favor of the plaintiff. All these are points upon which the Comptroller feels bound to obtain the information and advice of the Attorney-General, before he determines upon such a compliance, on the part of Mr. Astor, with

these two acts, as to authorise him to issue the stock. It is not, however, apprehended that any irregularity will finally be found to exist in any of these particulars; and the expectation is fully entertained that the duty of issuing the stock will become imperative, as soon as the necessary advice from the Attorney-General can be had, and the Legislature shall dispense with a decision in the two remaining suits.

It will be borne in mind, that the terms of the law of 1827 directed the issuing by the Comptroller, pursuant to the provisions of an act entitled "An act to create a public and transferable stock, and to lay and collect additional taxes for the use of this State," passed April 7th, 1815, of the amount of *four hundred and fifty thousand dollars* of public stock to Mr. Astor, upon the condition that the questions of title and improvements should both be decided in his favor; and that the same act directed the issuing of the amount of *two hundred and fifty thousand dollars* of public stock, in case the question of title should be decided in favor of Mr. Astor, and the question of improvements against him. The act proceeds to say, "And whichever sum, if any, shall be so due, shall be paid by the Comptroller, in certificates of stock on behalf of this State, *redeemable at the pleasure of the State*, bearing interest at the rate of five per centum per annum, *to be computed from the date of this act*, and payable quarterly, on the first days of July, October, January and April in every year; the first payment of interest is to be made on the first quarter day after such decision of the said Supreme Court, and is to include all the interest which shall then have accrued from the date of this act." It has been before said, that the decision of the three suits has been in favor of the plaintiff upon both the questions of title and improvements; and therefore, if the acts referred to, shall be found to have been complied with in the course of the proceedings, and any stock is to be issued by the Comptroller, the amount so to be issued must necessarily be *four hundred and fifty thousand dollars*.

It should then be remarked, that interest upon the amount of the stock which, by the final decision of the suits, should be found due to Mr. Astor, was, by the terms of the act, to be paid from the date of the act to the time of the payment, at the rate of five per centum per annum. This interest, it will be seen, is not payable in stock, but in money; and the words of the law are, "the first payment of interest is to be made on the *first quarter day* after such decision of

the said Supreme Court, and is to include all the interest which shall then have accrued from the date of this act." The words of the act regulating the rate of interest of the stock, and the periods of its payment, are, that it shall be issued, "bearing interest at the rate of five per centum per annum, to be computed from the date of this act, and payable quarterly, on the first days of *July*, October, January and April in every year." Is then the Comptroller, in issuing this stock, at whatever time that may be done, to arrange the quarter days and the quarterly payments of interest upon the stock, in the same order in which they are arranged in the act, to wit, "the first days of July, October, January and April in every year"? or is he to arrange them in an order corresponding with the time when the stock shall be in fact issued, or in an order governed by the date of the final decision of the last of the causes? In short, the two last causes were decided at the January term last of the Supreme Court of the United States; and is the *first quarter day* after those decisions, and therefore the time when the first payment of interest is to be made, to be considered the first day of April next, or the first day of July next? The Comptroller respectfully solicits the construction of the Legislature upon this part of the act, as he understands that the day designed to be fixed for the first payment of interest, was the day on which the first quarterly payment of interest should become due upon the stock according to its face.

The date of the act is 16th April, 1827, and if the first day of April next is pronounced to be the day upon which the first payment of interest is to be made, the amount of that payment will be the interest, at five per centum per annum, upon four hundred and fifty thousand dollars, for the period of four years, eleven months and fourteen days, or from the 16th April, 1827, to the 1st of April, 1832, making the sum of *one hundred and eleven thousand five hundred dollars*. If the first day of July next be assumed as the time when the first payment of interest is to be made, the amount then payable will be *one hundred and seventeen thousand, one hundred and twenty-five dollars*, being the interest, at five per centum per annum, upon the same amount of four hundred and fifty thousand dollars for the period of five years, two months and fourteen days, or from the 16th April, 1827, to the 1st July, 1832.

But, whichever day shall be determined to be the correct one for the payment of this interest, the former communications from this office, during the present session of the Legislature, must have made

that body fully aware that no means are in the treasury, or within the power of the General fund, to make this payment. Unless, therefore, some further legislation shall make the necessary provision, a resort by the Comptroller to the power vested in him by section eleven of title three, chapter eight, of the first part of the Revised Statutes, to make a temporary loan upon the credit of the State, will be required to meet this demand for interest. It is probably well known to the members of the Legislature, that the spring is ordinarily the most difficult season to make loans of money upon advantageous terms, and especially of a temporary character, and that the present is a time of pressure in the money market, unusual at this or any other season of the year. There may be a question therefore, whether it will be in the power of the Comptroller to make the required loan, at the rate of interest to which he is limited by the act referred to. It should also be recollected, that quarterly payments of interest upon this stock, after it shall be issued, are to be regularly made, and that means are to be provided to meet those as well as the first heavy payment of interest becoming due.

In this state of the finances, the Comptroller has believed it to be his duty to suggest to the Legislature, the expediency of passing a law directing the payment not only of this first amount of interest, but the redemption of the stock itself from the surplus moneys of the canal fund now in the charge of the Commissioners of that fund. It has been seen that this stock is to be made "redeemable at the pleasure of the State," and it may therefore, without any injustice to Mr. Astor, be redeemed at the moment of its issue. The surplus moneys of the Canal fund, to a large amount, are now deposited in various banks of the State, at an interest of from three and one-half, to four and one-half per cent, while five and six per cent is paying upon the stocks which this money is destined to redeem. As the State will have, for a time at least, to loan the money to meet both the interest and principal of this claim, and as the law compels the issuing of a five per cent stock for the principal, it appears to the Comptroller to be clearly for the interest of the Canal fund, and in no way injurious to the General fund, that he should be directed to issue to the Commissioners of the Canal Fund, in trust for that fund, a five per cent stock, redeemable at the pleasure of the State, and in amount sufficient to pay the interest due to Mr. Astor, at the time when that interest shall be payable, and to redeem the principal of the stock to be issued to him; that the Commissioners should be directed to take such stock at par; and that

the Comptroller, with the avails, should at once extinguish Mr. Astor's claim upon the State. This will furnish a more satisfactory and more profitable investment for a portion of the Canal fund moneys than the present temporary deposits, while the stock, if not redeemed, will always enable the Commissioners to realize its par value in money, in case the redemption of the Canal stocks shall render such a conversion necessary ; and the stock being made redeemable at pleasure, it will be at all times in the power of the treasury to relieve itself from the payment of the interest by the redemption of the stock when means shall be provided for that purpose. The Comptroller is able, of his own knowledge, to state, that the Canal fund moneys in the charge of the Commissioners, except such portion thereof as it is necessary for the Commissioners to keep in the general depositing banks in Albany, to answer the current drafts for interest and expenses, are now so far deposited and contracted to be deposited with sundry banks, at an interest of four and four and an half per cent, that the Commissioners have not the means to take the stock without making drafts to a considerable extent upon those deposits. The contracts upon which they are made, require of the Commissioners to give to the banks at least sixty days' notice before a draft can be made ; and, should this suggestion be adopted by the Legislature, and the Commissioners be required to take this stock and advance the money, it will be necessary to give them at least sixty days from the passing of the act before the payment shall be demandable, that they may put the fund in a situation to meet the call. If the first day of July be considered the proper day to make the first payment of interest, there will be sufficient time ; but if that payment should be considered due on the first of April, some provision as to time may be necessary.

It will remain for the Legislature to make provision for the payment from the treasury, of the quarterly interest upon the stock to be issued in any event, and if the arrangement be made with the Canal fund, as proposed, the amount of stock upon which interest will be payable, will be from \$560,000 to \$570,000.

One other consideration connected with these litigations seems to have been left wholly unprovided for in both of the acts of 1827 and 1828, and which the Comptroller considers it his duty to bring to the notice of the Legislature, as questions may hereafter arise, unless it is embraced in the final settlement of the claim. He refers

to the costs of the suits. The language of the act of 1827 is, that the stock shall be issued or the payment made "by way of compromise, and in *full extinguishment* of the claim" of Mr. Astor, and nothing is authorised to be paid beyond the specified amount of the stock and the interest thereon. It is not claimed by Mr. Astor, to the understanding of the Comptroller, that, under these acts, the payment of his costs can be made, but he does understand it to be insisted that Mr. Astor's claim, against the defendants in the suits, for these costs, will not be cancelled by his receipt from the State of the stock and interest. The State, as is known, has not been a party to these suits, but they have been carried on upon the record, against certain individual tenants upon these lands. It was to indemnify these tenants, they being the grantees of the State, that it interfered in the suits at all; it was for this object that the acts in question were passed by the Legislature, and that the compromise was attempted. Still the judgments in the three suits, which have been tried and determined in favor of the plaintiff, now stand against the individual defendants, as well for the costs of the litigation, as for the recovery of the lands of which they are respectively possessed; and surely if these judgments are not entirely satisfied, and the claims for costs relinquished, the defendants will not be indemnified; the object of the Legislature, to that extent at least, will be defeated, and the tenants will again come upon the State for further indemnity.

Believing, both from the language and spirit of these laws, and from the plain objects to be attained by them, that the Legislature designed, by the payment provided for in the act of 1827, not only to secure a "full extinguishment" of the claim of Mr. Astor to these lands, but also an equally full extinguishment of all claims he might have against the tenants of them, growing out of his claim of title, and that full and perfect indemnity to those tenants was the sole inducement with the Legislature in directing any payment, the Comptroller has signified to the agent of Mr. Astor that he shall not feel authorised to issue this stock until full and complete discharges from all claims for the costs and expenses of these suits, either against the State, or against the defendants in the suits, are executed by the proper parties, and delivered to be put upon record with the other papers. As, however, both the laws of 1827 and 1828 are entirely silent upon the question of costs, and the opinion formed is drawn alone from the reason of the case, it is peculiarly pro-



per that the question should be submitted to the Legislature, and that that body should pass upon it. The Comptroller therefore respectfully requests that he may be directed as to the course he shall pursue in this particular. Of the amount of the taxed costs, or of the costs which would be considered taxable in the three suits, he has no information, but he has understood that the expenditures of the plaintiffs in the prosecutions, have exceeded fifty thousand dollars. The taxed or taxable costs must therefore be very heavy.

All which is respectfully submitted.

SILAS WRIGHT, Jr.,  
Comptroller.

*Dated Albany, 14th March, 1832.*



**No. 206.**

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**IN ASSEMBLY,**

**March 14, 1832.**

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**REPORT**

**Of the committee on canals and internal improvements, on the subject of the Chenango canal.**

Mr. Spencer, from the committee on canals and internal improvements, to whom was referred the engrossed bill from the Senate, for the construction of the Chenango canal,

**REPORTED :**

That they have had the same under consideration, and have examined various documents and reports upon the subject, and a majority of the committee have come to the conclusion that the law ought not to pass.

In the course of their investigation, their attention has been called to the following documents, to which they refer the Assembly, for the particular grounds on which they found their decision.

Report of a committee of the Assembly in 1824, Assembly Journal, page 1054.

Report of James Geddes, engineer of a survey made in 1825, Assembly Journal of 1826, appendix F.

Report of a committee of the Assembly, in 1826, Assembly Journal, page 1031.

Report of the committee on canals, of the Assembly, in 1827, Assembly Journal, 566.

Report of the committee on canals of the Assembly, in 1828, Assembly Journal, 515, and the report of the minority of that committee, page 522.

Report of the committee on canals, of the Assembly, in 1829, Assembly Journal, page 111, and appendix A.

Reports of the Canal Commissioners in 1830, Legislative Documents, vol. 1, No. 47, and of the committee on canals, of the Assembly, that year, vol 4, No. 299.

Reports in 1831, of the committee on canals, of the Senate, Senate Documents, No. 20, and of the minority of that committee, Senate Documents, No. 32, and of the committee on canals, of the Assembly, Assembly Documents, vol. 4. No. 287. And the annual reports of the Comptroller, showing the situation and continued decrease of the State funds.

A majority of the committee are convinced that the canal will cost more than the amount appropriated by the bill.

In the first place, no canal has yet been constructed in this State, for \$10,000 a mile, and no good reason has been given why this canal, with 114 locks on 95 miles, will be an exception to all—that our experience has hitherto taught us. In the next place, all the canals we have already finished, have greatly exceeded the estimates, and in most instances, have cost as much again as the Legislature supposed they would, when they authorized their construction.

From these facts, and a careful examination of the reports of the engineers, the committee are convinced that it will not be long after the expenditure of the million of dollars mentioned in this bill, before the Legislature will be required, either to abandon the work entirely, or grant more money to complete what the million of dollars cannot finish.

But even if this sum can finish the canal, the work must be done in a very slight manner. For if done substantially, it must cost a million and a half of dollars; and if done in the manner the Erie and Champlain canals are built, it will cost nearly two million. If built substantially, less money will be required every year for repairs, but more will be necessary to pay the interest on the large sum that must be borrowed to make the work permanent. If built slightly, as it must be, in order to use no more than the million of

dollars, then more money must be spent every year to keep it in repair, though less may be necessary for interest. In either case, nearly the same sum will be required every year to keep the canal in operation, and pay the interest on its cost.

Now, your committee are satisfied that this canal will never yield enough for this purpose.

The most favorable calculation of the friends of this canal, cannot make it yield enough to support itself, without the help of salt, lime, and plaster, passing down for the supply of Pennsylvania, and lumber passing up for the New-York market.

Salt, lime, and plaster, will not go into Pennsylvania by the route of the Chenango canal, because they can be carried cheaper, and in less distance by the Seneca lake and the Chemung canal, or by the Cayuga lake and the Ithaca and Owego rail-road, as any one can see by looking at the map.

As for the lumber, it cannot be supposed that any great quantities will be taken from the Susquehannah river, (on which it must first be carried in order to reach Binghamton) for the purpose of being carried 205 miles on canals, and 160 miles on the Hudson river to reach market, when it can reach good markets on the Susquehannah without paying any tolls. The lumber of that country now goes principally down the Susquehannah river, and we do not believe that the tolls on the Chenango canal, will be any inducement for its taking a different direction from its present course.

But allowing to the canal all the revenue its friends claim for it, still your committee cannot discover in any of the estimates, the least evidence, or the slightest hope, that it will ever pay one cent towards the cost of its construction. The million or more of dollars then, which it will cost, must remain forever as a debt upon the State, or be liquidated from some other source. The friends of this measure say it may be paid from the canal fund; but that is pledged to the payment of the present debt, and cannot be touched till 1845, and in the mean time, so many things may happen to diminish that fund, that it will be much wiser to wait till we get it, before we provide for its expenditure. We have no other means of paying this large debt, but by a resort to direct taxes.

In 1817, when our canals were commenced, our general fund was about \$4,000,000, and we had an annual revenue of about \$924,000, while the expenses of government were about \$565,000. Now the expenses of government are only about \$270,000, while the general fund is reduced to about \$1,000,000, and the annual revenue is only \$112,000, being \$158,000 less than is absolutely necessary to pay the expenses of government. The general fund will soon be all exhausted, and we shall have no other means of sustaining the government but by a resort to taxation.

Now if the committee are right in believing, that the revenue of the Chenango canal will not be sufficient to pay the interest on its cost, and the expenses of its superintendence and repairs, a direct tax must be laid upon the whole people of the State to keep that canal in operation, and to pay for its construction. The committee do not believe that the people will ever consent to this, and our past experience ought to teach us to beware how we add in this manner to the burthens of our constituents.

When the Oswego canal was authorized to be made, a joint committee said, and the Legislature believed, "that it would greatly augment our revenue," instead of which, it draws from our treasury every year about 20,000 dollars to keep it in operation, so that in 1846, the State will, besides, have to pay a debt of 427,347 dollars for its construction, without ever having received any thing from the canal toward that object.

It is the same with the Cayuga and Seneca canal. There too, a committee reported that "it would be a source of revenue to the State," and that "the tolls which it would yield, would, in a few years, repay the expense of its construction, together with the interest thereon;" instead of which it has been a constant tax of from 8 to 10,000 dollars a year upon the general fund. And here too, in 1846 and 1849, the State will have to pay a debt of 237,000 dollars for its construction, without being at all aided by the canal in doing so.

There is every reason to believe that the Chemung and Crooked lake canals will produce the same results.

We thus have four canals which will add 30 or 40,000 dollars a year to the necessity of imposing a direct tax on the people of this State. That sum will be doubled at least, by the Chenango canal.

And your committee are not willing to impose upon the people a debt of even one million of dollars for the construction of the Chenango canal, and direct taxation forever after to keep it in operation.

JAMES B. SPENCER,  
J. L. WOODS,  
E. LITCHFIELD.



**IN ASSEMBLY,**

**March 1, 1832.**

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**REPORT**

**Of the committee on the erection and division of towns and counties, on the petition of sundry inhabitants of the town of Brookhaven, in the county of Suffolk.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the town of Brookhaven, in the county of Suffolk,**

**REPORTED :**

**That by a patent granted December 27, 1686, the trustees of the freeholders and commonalty of the town of Brookhaven were created a body corporate and politic in deed and in name, with right of perpetual succession, which patent also granted to them and their successors forever, certain territory, with all their bays, harbors and rivers, with the right of fishing and fowling within its limits.**

**The committee find on an examination of the legislative documents, that in each of the two preceding years application has been made to the Legislature for the division of this town on the same plan as now proposed, and that in both cases adverse reports were made thereon. The question was fully examined by a committee of the Senate last year, and that committee in their report, substantially sustained the objections urged by the remonstrants, that the Legislature had no right to make the division, unless by the consent of the corporators, signified and expressed by the trustees in their corporate capacity.**

Your committee are inclined to the opinion that this view of the subject is correct, and considering the town in the character of a corporation, it necessarily follows that the notice which has been given of the present application is not such as is required by law in similar cases.

The petitioners complain that they are subjected to much inconvenience from the great distance they are obliged to travel to and from the place of town meetings.

The town meetings are held at a place nearly or quite central, and your committee cannot perceive from the facts before them, that those who ask for a division suffer any greater inconvenience than a considerable proportion of those who are contented and satisfied with the town as it now is, and who remonstrate against the division; and they are led to the belief that such an alteration of the territory of the town in question as is now proposed would discommode quite on the one hand as it would accommodate on the other.

But independent of the objections above noticed, and which are urged against the division, the committee are presented with a certain evidence of the wishes of that town in relation to this question, as expressed by large and decided majorities of the people at their two last annual town meetings, and by the remonstrance at this time, not only of the trustees in their official and corporate capacity, but of a large majority of its other inhabitants. These facts, in the absence of all others, are sufficient in the opinion of the committee, to justify them in their conclusion, that it is inexpedient to grant the prayer of the petitioners. They therefore submit the following resolution.

**Resolved,** That the petitioners have leave to withdraw their petition.



**No. 208.**

**IN ASSEMBLY,**

**March 8, 1832.**

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**REPORT**

**Of the select committee, on the petition of the New-York Coal Company.**

**Mr. M'Keon, from the select committee, to which was referred the petition of the New-York Coal company, praying a renewal of its charter,**

**REPORTED :**

**That the charter of said company was passed on the 6th day of April, A. D. 1814, and that the same will expire on the 6th day of June, one thousand eight hundred and thirty-five.**

**The petitioners represent, that they have purchased a valuable tract of coal land, from which they are now actively engaged in mining, vending and introducing anthracite coal of a superior quality into the city and State of New-York, and from which they expect to procure for consumption thirty thousand tons annually.**

**The coal lands of the company are situated in a part of Pennsylvania, through which railways, tunnels, and many other permanent improvements are now making and in contemplation, so as to increase the facilities for the conveyance of coal to this State, and which must be of great benefit and advantage to the consumers of coal, and tend to reduce the price thereof.**

**The petitioners are desirous of promoting said improvements, but, as the extent to which they may engage therein must in a great measure depend on the duration of their charter, and which has but three years to continue, they solicit the Legislature to extend the**

period of their charter for twenty-one years from the sixth day of June one thousand eight hundred and thirty-five.

The committee being of opinion, that the Legislature ought to assist the company in the prosecution of their views, has directed the chairman to bring in a bill in accordance with the prayer of the petitioners.

**No. 209.**

**IN ASSEMBLY,**

**March 8, 1832.**



**No. 210.**

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## COMMUNICATION.

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STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

A claim having been presented to the Comptroller, under the 14th section of title 17, chapter 8 of the third part of the Revised Statutes, and his warrant upon the Treasurer having been demanded, which he has considered it his duty to refuse, he feels impelled to give to the Legislature, now in session, the statement of facts in the case, and the reasons which have brought him to the conclusion that a warrant should not be issued, in the following

### COMMUNICATION.

Title 9 of chapter 20 of the first part of the Revised Statutes, is captioned, "Of excise, and of the regulation of taverns and groceries." The first six sections of the title designate the commissioners of excise, prescribe the manner and place of their meeting, direct their book of minutes, give the power to grant licenses to keepers of taverns and to grocers, fix the fees to be charged for the licenses, and prescribe the character and qualifications of the person to whom a tavern license shall be granted. The seventh section of this title is in the following words :

"§ 7. Nor shall such license be granted, until the applicant shall have executed and delivered to the supervisor, or in case of his absence, one of the justices of the town, a bond to the people of this State, in the penal sum of one hundred and twenty-five dollars, with a sufficient surety, to be approved by the board of commissioners, with a condition that such applicant, during the time he shall keep an inn or tavern, will not suffer it to be disorderly, or suffer any cockfighting, gaming, or playing with cards or dice, or keep any billiard table or other gaming table, within the tavern so by him kept, or in any out-house, yard or garden belonging thereto."

The 21st section of the same title is in the following words :

**“§ 21. Whenever a breach of the condition of such bond shall happen, it shall be the duty of the supervisor of the town, mayor of the city, or trustees of the village in which such bond was executed, to prosecute the same, and recover the penalty thereof for the use of the poor.”**

Pursuant to these provisions, the supervisor of the town of Cherry-Valley in the county of Otsego, instituted a suit in the court of common pleas of that county, upon the bond of Norman L. Keyes of that town, an innkeeper, and who, it was alleged, had forfeited the condition of his bond. By the 21st section of the act above quoted, it will be seen, that the supervisors of the towns are directed to institute suits upon these bonds, “whenever a breach of the condition of such bond shall happen;” and by the 7th section, it will appear that the bond is required to be taken in the name of the people of the State of New-York. The suit, therefore, if instituted at all, must be brought in the name of the people; they being the obligees in the bond. This was done, and the suit was tried at the February term last of the court of common pleas of the said county, and a verdict was rendered in favor of the defendants in the suit, the innkeeper and his sureties. The consequence was, that a judgment passed against the people, the nominal plaintiffs in the suit, for costs, amounting to \$62.49.

This is claimed to be a case coming within the provision of section 14, title 17, chapter 8 of the third part of the Revised Statutes; and the original record of the judgment duly signed, the bill of costs duly taxed, and a certificate of the Attorney-General, “that such suit or proceeding was duly instituted as by law required,” have been produced to the Comptroller, upon which to found the demand for a warrant upon the Treasurer for the costs.

The reason which governed the Comptroller in refusing the warrant, is, that the people had no interest in the suit, directly or indirectly; that no officer of the State was concerned in the prosecution of it; that the penalty to be recovered is, by the statute authorising the prosecution, appropriated to the poor of the town; that an officer of the town is directed to institute the suit; that the whole proceeding is for the benefit of the town, and consequently must have been intended to be at the risk and expense of the town; that the people are, in all that class of cases, a merely nominal, while the supervisor of the town is the real, party plaintiff in the suit; and that it could never have been the design or intention of the



**Legislature to make the treasury of the State responsible for the costs of a disastrous litigation, where that same treasury could not receive the benefit if the same litigation had been prosperous.**

Still it is conceded that the language of this section of the statute is entirely general, and that the conclusion to which the Comptroller has arrived is sustained by the reason and equity of the case, and not by the wording of the provision. And as this is the first case of the kind, which has been presented, he has considered it an imperative duty to state the facts, and his conclusions, to the Legislature, that in case that body should concur with him in opinion, as to what the law was designed to be, a modification may be made, to prevent others from being misled, as he supposes these parties evidently have been, in relation to the obligation upon the State to pay these costs.

A slight examination of the statutes will show that the number of bonds alone directed, by the existing laws, to be taken in the name of the people, is very great, and that the suits which can be instituted in the name of the people, for statute offences and statute penalties, where no officer of the State is to be consulted, or to have charge of the prosecution, and where the public treasury can not by possibility be benefitted by any recovery to be had, are immense. The hazards, therefore, to the treasury, if the construction contended for by these claimants is to be given to the provision in question, imperiously demand the immediate action of the Legislature, and the relief of the State from future claims of this description. But the Comptroller owes it to his sense of justice to say, that, until directed by legislative instruction, or by the judicial tribunals, he can not possibly recognize a construction, of any statute, so unequal and unreasonable in its operation as that here contended for.

The authority given to the supervisor to institute suits, in cases like the present, attaches "whenever a breach of the condition of such bond shall happen;" and it may, perhaps, be said that the verdict in favor of the defendants shows that no breach of the condition of this bond had happened; and that, therefore, the supervisor had no authority to institute the suit. What evidence was furnished to the supervisor to satisfy him that a breach of the condition of the bond had happened, or upon what probable cause the suit was commenced, is not known; but to give this technical construction to the law, and to suppose that the supervisor is to foresee, with

certainty, the event of a suit of this description, before he commences it, or to be personally responsible for that event, is a rigid adherence to the terms of the provision which the Comptroller is not inclined to adopt. But if this rigidity of construction be adopted, still a doubt may exist whether the rights of the defendants are to be determined by it. The law authorises the supervisor, upon the happening of a contingency, to institute a suit in the name of the people. The supervisor determines that the contingency has happened, and commences the suit. The people are the plaintiffs, and the defendant, after being put to the expense and trouble of a defence, shows that he was wrongfully prosecuted. Is he then to be told that the proof of his innocence has shown that the officer had no authority to bring the suit, and, therefore, that he must look to him for indemnity? It is believed that such was not designed by the Legislature to be the responsibilities of the person to whom it was assigned, as an official duty, to prosecute these bonds; and that if they intended to make the public treasury responsible for the trouble and expense to which an innocent defendant might be put, they could not have expected that his indemnity should be defeated by the proof of his innocence.

The question is therefore considered as returning to the proper construction of the section of the law giving costs against the people, in any case, and to the decision of the point whether or not this is a case coming within the provisions of that section. Hence the reasoning used in a former part of this communication is supposed to be applicable, and the true construction of that section is supposed to result from a just settlement of the real objects of any given suit, and the real interests of the nominal parties to it.

No doubt is entertained that, where suits are prosecuted by the Attorney-General, or by the direction legally given of any of the officers of the State, or where the interests of the State, as a government or body politic, are involved, and the recovery, if favorable, is to benefit its treasury, the costs, if adjudged against the people, are, by the authority of the section in question, to be paid out of that treasury. But it is not believed that the general interests of the State, as a body politic, in the ordinary police of its cities, towns and villages, was designed to be carried so far, by the Legislature, as to make the public treasury responsible for the litigations to arise from real or supposed violations of those police regulations, even though the statute might authorise the use of the name of the peo-

ple, in the prosecution of such suits. Much less is it believed that this responsibility was designed to be imposed, when the recovery, if had, is expressly declared to be for the benefit of the city, town or village where the infraction is charged to have taken place.

It should, then, be borne in mind, that the suit in this case was brought upon an alleged breach in the condition of the bond of an innkeeper. That bond is required by the law, not for the benefit of the State treasury, but for the preservation of good order and good morals in the town. A violation of the condition of the bond is punishable by the infliction of a pecuniary penalty. For the recovery of that penalty the suit is brought, and the money, if recovered, is expressly appropriated to one of the most worthy charities of the town, to the support of its poor.\* An officer of the town, elected by its freemen, and holding the first office within their gift, is constituted the discretionary agent to say when a breach in the condition of the bond has happened, when the good morals or good order of his town have been violated, when the penalty has been incurred, and a suit should be instituted to redress the injury, and to add the forfeiture to the fund for the support of the town's poor. In all this, nothing can be discovered but the ordinary process of carrying into effect a mere regulation of police, nor can the supervisor be viewed in any other light than as the agent of the town, for whose sound discretion the town is responsible. True it is, the law has directed these bonds to be taken in the name of the people, and therefore the suits upon them must be brought in that name; but the objects of such a bond cannot be mistaken; the interests to be served by the prosecution are expressly declared, and the hazards of the litigation should certainly fall where the benefits are to be realized. If the statute had directed the bond to be given running to the supervisor by his name of office no question of this description would have been raised, and yet not a fraction of interest would have been changed by such a provision. The supervisor would have been equally the agent and officer of the town, the bond would have been taken for the same purpose, the preservation of the good order and good morals of the town, the penalty, if recovered, would have gone in the same manner, to the support of the poor of the town, and consequently to its extent to relieve its citizens from that burden. Is then the mere use of the name of the people in this suit to change the hazards of this litigation, and to make the public treasury responsible for the mistaken steps of the prosecuting agent of every town and ward in the State? The Comp-

troller is not ready to adopt such a construction of the law, even taking its present terms, and if such a construction shall be considered as necessarily following the present provisions, he entertains the fullest confidence that the Legislature will see the necessity of adopting such modifications as shall render the statute more conformable to equity and plain justice.

The provision of the law referred to rendering an independent government liable to costs by the judgment of the courts of its own creation, is new in our legislation, if it be not new in the science of government; but whether that provision be wise or not in its application as a general principle, it is respectfully submitted that its adoption, where the government is a real party to the suit, and where its interests as a body politic are involved, will not prove the justice or propriety of its application, where the name of the people is permitted to be used by the conservators of the peace, or by those charged with the execution of mere police regulations; and if the interest of the State thus indirectly involved in this last class of suits should be considered a justification for charging the public treasury with the costs of a disastrous litigation, the obligation to defray the expenses would be much more forcible in the former prosecutions, where the people are always the party to the record, and where the personal safety of the citizen, and the peace of society are the objects to be gained by the proceeding. Still it has never been thought wise to charge the treasury with these costs, but to assess them upon the counties and districts for the especial benefit of which they are incurred. If this policy be correct in this respect, no reason is discovered why a different course should be adopted in reference to suits such as the one now in question.

But there is a further liability necessarily connected with this claim, if the claim itself is well founded. If the State is to pay the defendant's costs in this litigation, it should surely be considered obligated to pay the costs of its own attorneys in the cause. If the people were not a real party to the suit, they should pay no costs; but if they are to be considered as having been a real party, and therefore liable for the recovery of the defendant, no principle can exempt them from compensating those servants who were employed to advocate their interests. This would seem to be a plain consequence of the conclusion sought to be derived by the claimants from the provisions of the law, and still its adoption must involve the absurd proposition that the State is to be held responsible for

the services of counsel employed, not by any officer or agent of the State, but by a police officer of a town; not to prosecute a suit in which the public treasury is at all interested, but in which the citizens of the town alone have an interest. And this consequence must follow an assumed liability to pay the costs of the defendant, because he succeeded in the defence, and the People of the State were made by the statute a nominal party to the suit.

The Comptroller is aware that it may be alleged, that these views of the subject go rather to indicate what he supposes the law should be, than to expound it as it is. The justice of such an allegation is partially admitted; but it will be recollected that he is addressing the body, which alone can remedy defects in the existing law, while they can, equally with any other tribunal, settle the proper construction to be given to it in its present shape. He has therefore indulged in these remarks, to show his sense of the necessity of an amendment, provided the construction contended for by the claimants is to be sustained in the present shape of the provision. There are now probably from one to two thousand persons who are authorised by the existing statutes to institute suits in the name of the people, when the public treasury has not the least interest in any recovery to be had, but where the suit is, like the one under consideration, to be prosecuted by way of enforcing some municipal regulation. The hazards, therefore, to the State, may not be light; while the great injustice of amercing the people of the whole State, for the improvident or ill-advised institution, or careless and neglectful prosecution of any such suit, is most manifest.

That this provision of the law, thus construed, may also be the subject of great abuse, is at least possible. The great number of suits which may be brought, the want of personal interest in the agents who have the charge of the prosecution, the remoteness or entire want of responsibility of those agents to the State government, the necessary carelessness as to their responsibility to those from whom they receive their election or appointment, so long as the public treasury is to sustain the expenses of a defeat, while any recovery obtained is to go to the benefit of those they are interested in conciliating, are all causes which, without the supposition of designed misconduct, are calculated to increase the drafts upon the public funds of the State, under a show of vigilance on the part of the officer charged with the institution of the suit.

To guard against these dangers, and to produce a perfectly equitable adjustment of these burthens, when it is necessary to incur them at all, it is believed that the provision of the law making the State liable for costs, if retained in the statute book at all, should be so modified as to admit of no ambiguity of construction, and should be strictly confined to cases where the interests of the public treasury are directly involved in the litigation, and where the suit is brought and prosecuted by the Attorney-General of the State, or by express direction and authority lawfully given from officers or agents appointed by the government, and responsible to it for their acts.

To meet cases similar to that of the claimants, a provision should be made, directing the supervisors of the county to levy the money, and to assess it upon their county, or upon some particular town, as the real interests involved in the suit should equitably require. And in connection with this subject, it is respectfully suggested, that in case the Legislature should be of the opinion that the existing law makes the payment of the costs of the suit in question, out of the State treasury, an obligatory duty, provision should be made for charging such payment in the account of the treasurer of the county of Otsego, and directing the supervisors of that county to raise the amount to meet such charge, by an assessment upon their county, or upon the town of Cherry-Valley, as the regulations at present existing for the support of the poor of the county, and of the respective towns, shall render consistent with the real interests involved in the litigation.

All which is respectfully submitted,

SILAS WRIGHT, Jr.

*Dated Albany, 14th March, 1832.*

**No. 211.**

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**IN ASSEMBLY,**

**March 8, 1832.**

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**REPORT**

**Of the committee on claims, on the petition of  
Michael Anthony.**

Mr. J. Miller, from the committee on claims, to whom was referred the petition of Michael Anthony, with the documents accompanying the same,

**REPORTED :**

The petitioner represents, that during the earlier part of the revolutionary war, his brother Joseph Anthony, being the oldest male heir of Joseph Anthony, deceased, who died shortly before said war, derived title by descent to a certain farm, situate in the town of Peekskill, in the county of Westchester ; which farm adjoined the lands of Col. Samuel Drake. That during said war, large quantities of wood and timber growing and being upon said farm, were cut off, and for fuel and barracks appropriated to the use of the continental army. It is also set forth, that the damage thus done upon said farm, was, in the year 1782, fixed by appraisers appointed to estimate the amount of waste committed upon sequestered estates in the State of New-York, at two hundred pounds ; which sum he asserts has never been paid. And the petitioner also alleges, that he has become legally entitled to receive said sum of money with the interest thereof, and hence he claims an allowance of both. In behalf of the petitioner, a conveyance is produced, bearing date in 1786, executed to him by the aforesaid Joseph Anthony, as by the same appears, by which he became the owner of said farm. A deposition is also introduced, apparently made by one Abraham Brevoort, of the city of New-York, in the year 1813, touching the claim in question ; who, among other facts, swears that he entered upon said farm about

]A. No. 211.]



the year 1781, and thereon continued until 1783, by the permission of James Hunt, Esq. commissioner of sequestration; that the wood and timber had been materially destroyed before he came upon the said farm, and that he never did apply for any certificate, paper or other evidence for the spoilations made on the said farm, or authorise any person in his name to make such application for any damage that the said farm sustained during the revolutionary war; and that he did never apply, in person or by attorney, or otherwise obtain a certificate, No. 550, stated to have been obtained in the name of him, for two hundred pounds, for damages done by the United States' troops in the American war, by cutting off the timber in the year 1780.

In confirmation of the testimony produced by the petitioner on former occasions to establish the claim against the State for the said two hundred pounds, as by report appears, reference has been had to an ancient book in manuscript, remaining in the Comptroller's office, containing divers entries and memorandums, and among others, a certificate, dated 15th December, 1782, purporting to have been made by John Keese, on the part of the United States, and James Roosevelt, on behalf of this State, commissioners by virtue of an appointment therein expressed to have been made, on the first day of September, 1782, by Col. Timothy Pickering, acting quartermaster-general of United States. It is therein specified, also, that said commissioners had appraised the damages committed upon a farm situate at the place aforesaid, belonging to George Folliot, possessed by Abraham Brevoort, at the aforesaid sum of two hundred pounds.

An inspection of the manuscript, the subjects, matter and manner of entries contained, it is believed, will afford satisfactory evidence to the attentive observer, of its truth as a record, and that it is a genuine relic of the historical events of those times. This manuscript entry goes clearly to shew, that at the time of the appraisal of the damages therein mentioned, the farm upon which it had been done, was adjudged to have belonged to George Folliot, who is represented to have been one of the disaffected, had consequently joined himself to the enemy, and thereby forfeited his said farm and interest therein to the people of this State. Apart from the certificate aforesaid, there is no evidence in the case that Folliot ever had any title or interest in the farm aforesaid, or any other in the neighborhood.



The committee have no adequate means, after a lapse of more than fifty years, of satisfying either the House or themselves, how the intelligent agents of government, whose duty it was to know, and who, as cotemporary actors in those scenes, with requisite means, as to us it would seem, of knowing, happened to be so perfectly mistaken as to a fact so important to be understood, as the ownership of said farm, while, in relation thereto, they were exercising the authority of sequestration, a degree of power more frequently indicating violence than doubt, solely upon the ground that the estate belonged to a traitor.

The claim of the petitioner rests upon the truth of his asseveration, which to establish is effectually to gainsay the facts assumed by the commissioners aforesaid, and show their acts were wholly unauthorised : and that in fact, at the time of the commission of the waste, said farm belonged to the before named Joseph Anthony, a loyal citizen. Assuming the facts to be true, and admitting it to be satisfactorily established, that this State obtained a credit in its account with the United States for the said two hundred pounds for the waste committed, which latter facts are not doubted, justice seems obviously to require that the real owner of the premises upon which the waste was committed, or his authorised agent, should be allowed said sum. As his authority, the petitioner produces from Joseph Anthony a writing under seal, bearing date 20th July, 1831, granting to him all the claim which he ever had against the United States or this State for the damage aforesaid.

The father of the petitioner is said to have died shortly before the revolutionary war, leaving a family exposed on the farm to the perils incident to a residence in the vicinity of that then harrassed region, may well, as is asserted it did, have induced the family to abandon their home for the sake of safety ; and its desertion may have occasioned the mistaken conclusion, that the owner was an absconded traitor.

The committee are fully convinced, that a becoming regard to claims having the appearance of being entirely just, when based like the present, upon testimony so loose, cannot at this day be indulged, in relation to transactions long gone by, and necessarily imperfectly understood, without the hazard of opening a way for the successful practice of the most flagitious imposition upon the commonwealth.

The committee, however, feel themselves constrained to recommend the payment of the two hundred pounds ; as to the interest, the following considerations are submitted.

It does not appear that the petitioner had authority until July last, to receive the money in the petition claimed. The State could no longer retain the money than until the true owner should establish his right thereto, and until that should be done, the State is to be considered as the depository of the money, holding as trustee for such owner, subject always to a liability to pay over upon the presentation of such authenticated claim, to whomsoever should be empowered to receive and discharge it.

A farther consideration, which alone might well determine the inquiry as to the allowance of interest, is the doctrine contained in a communication made by the Comptroller on the 9th February, 1831, distinguished in Assembly Documents as No. 228, in which, after commenting at length, it is laid down as one of the leading principles of the government, that the public treasury is always ready to pay all just claims against it when presented ; and hence, unless the government occasions the delay by its act, it never pays interest, but by express contract or express law, &c. It will, therefore, be for the Legislature, in its sovereign discretion, to except this case when under consideration, from the operation of the rule established, should the force of its equity induce a conviction of its propriety.

In accordance with the views submitted, the committee have directed the preparation of a bill, to present which, leave is now asked.

**No. 212.**

**IN ASSEMBLY,**

**March 8, 1832.**

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**REPORT**

**Of the select committee, on the petition of the trustees of the Franklin Academy.**

Mr. Spencer, from the select committee, to which was referred the petition of the trustees of the Franklin Academy, praying that an act may be passed authorising the clerk of the county of Franklin to record the mortgages belonging to said institution in a separate book,

**REPORTED :**

That they have had said petition under consideration, and believe the following facts set forth in their petition to be true: That they were incorporated by the board of the University in the month of May last; that said institution is now in successful operation; that the institution has now in the clerk's office more than seventy mortgages, deposited for the benefit of the institution, unrecorded. They request that the mortgages may be recorded in a separate book, to be by them furnished, for recording all mortgages belonging to, and that may hereafter belong to said institution.

Your committee consider the prayer of the petitioners to be reasonable, and have instructed their chairman to ask leave to introduce a bill.





late John Knickerbacker, of Schaghticoke; in consequence of which, instead of obtaining his freedom with those slaves who were in the hands of the commissioners of forfeitures, he was held as a slave, for the space of 41 years, the State retaining in its treasury the price of his personal liberty.

The amount for which he was sold, appears, from the oath of the petitioner, to be \$160, and the high character which he sustains remove all question of his credibility. It may not, however, be improper to state, that Col. Wm. Knickerbacker, the eldest son of the petitioner's late master, while he establishes the other facts stated in the petition, testifies that he thinks he has heard his father state that the price which he paid to the commissioners of sequestration was £60, or \$150. Your committee are of opinion, that, in relation to this trifling difference, the statement of the petitioner should govern them in this decision, as *he* testifies to a fact within his *own knowledge*, whereas the other witness only states his recollection of the declaration of a third person, in a matter in which he was not so immediately interested.

It appears from the 9th vol. of the minutes of the committee of safety and convention, page 234, that Younglove and Palmer were duly appointed commissioners of sequestration, for the northern district of Albany county, (then including Rensselaer,) on the 6th March, 1777, and in the year 1778, (in which year the petitioner was sold,) paid into the treasury the sum of £1,783 or \$4,457.50, on account of sales of confiscated estates, as appears from books in the office of the Comptroller.

The petitioner has arrived at the advanced age of 69 years, in extreme indigence, with an aged and decrepid wife, whom he has been able to support, hitherto, only by the exertion of honest industry and the strictest economy.

The committee have the most satisfactory evidence of his honest and exemplary deportment through life, and believe him altogether worthy of the favorable notice of this Legislature, and of the relief which he asks.

In conclusion, the majority of your committee recommend the payment to your petitioner of the sum of \$160, as an act of strict justice to him, and due to the character of the State, which, in their opinion, would be *sullied* by withholding, any longer, from the peti-

No. 213.]

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tioner, the *price* of his bondage, the use of which, (in its treasury,) it has had for the space of 54 years.

They have, therefore, prepared a bill to that effect, which they beg leave herewith to present.





**No. 214.**

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**IN ASSEMBLY,**

**March 13, 1832.**

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**REPORT**

**Of the committee to whom was referred the petition of the directors of the Mount-Hope and Lumberland turnpike company.**

**Mr. Van Duzer from the committee to whom was referred the petition of the directors of the Mount-Hope and Lumberland turnpike road company,**

**REPORTED:**

**That they have had the same under consideration: that it appears that said company are in possession of about six thousand acres of land, in the counties of Orange and Sullivan, which said lands the directors have not been able to dispose of, at what they consider to be a fair price: that the company is in debt, and have no other resources for payment than the said lands: that some of the directors of said company are willing to give a higher price for said lands, or portions of them, than has yet been offered, although the same have been for sale in the market for several years past, and public sales at vendue attempted, upon notices published in the public papers having extensive circulation, provided they could safely purchase for their individual benefit: that the directors became personally responsible for a large sum of the original cost for making said turnpike road, and can only indemnify themselves by having an opportunity to purchase the lands, at what they may be willing to hold them at, in the hope of hereafter realizing from them, in the event of a rise in their value, the amount for which the directors have made themselves personally responsible as aforesaid.**

**The committee deeming the prayer of the petitioners to be reasonable, have directed their chairman to ask leave to introduce a bill.**

**[A. No. 214.]**



**No. 215.**

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**IN ASSEMBLY,**

**March 14, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the village of Hamilton, in the county of Madison, for the incorporation of the Hamilton Water Association.**

**Mr. Head, from the select committee, to whom was referred the petition of sundry inhabitants of the village of Hamilton, in the county of Madison, praying for the passage of a law to incorporate the Hamilton Water Association,**

**REPORTED :**

**That they have examined the subject, and that the following are among the principal reasons assigned by the petitioners for granting their application :**

**That said village is destitute of good and wholesome water for culinary purposes, and that there is no means of supplying said village with such water, short of fetching the same a considerable distance and at great expense, in aqueducts ; which renders it difficult and expensive for individuals to furnish or supply themselves.**

**Your committee are of opinion that the prayer of the petitioners is reasonable and ought to be granted, and have, in conformity thereto, prepared a bill, and instructed their chairman to ask leave to introduce the same.**

**JOHN HEAD, 2d.**



**No. 216.**

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**IN ASSEMBLY,**

**February 24, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on the petitions of sundry inhabitants of the county of Erie.**

Mr. Moulton, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to whom were referred sundry petitions from inhabitants of the county of Erie, praying for the passage of a law authorising Reuben Sackett and his associates to make a turnpike road from Buffalo to Hamburg, across the reservation of the Seneca tribe of Indians,

**REPORTED:**

That the petitioners represent that the present road is generally in a bad condition, and for a considerable part of the year almost impassable. That no means are provided, except by voluntary subscription, to repair it; and that a great proportion of it is skirted with woods, or the settlements of the Indians, who are not disposed, and cannot be compelled to labor on the road. That it is the only way for the inhabitants of the south, southeast and southwest parts of the county, to travel to or from Buffalo, the county seat, and the principal market for the surplus produce of the farmers.

The application is resisted by a large number of remonstrants of that county, who allege, that by voluntary donation and taxation, they have done considerable towards the improvement of the road; that they have expended some thousands of dollars on the same; that they have very recently raised upwards of nine hundred dollars for its improvement; and that the effect of granting the prayer of the petitioners will be, to draw money, by means of a toll-gate, from the individuals who have already done thus much for the improve-

ment of the road in question, for the benefit of others. A want of confidence is also expressed in the ability of Mr. Sackett to execute the grant, should the power of doing so be conferred upon him.

Amongst the papers referred to the committee, there is also a remonstrance against the application, from the chiefs, sachems and warriors of the Seneca nation of Indians, who represent that Buffalo is the only place with which they have any considerable intercourse, and that they experience no inconvenience from the present state of the road ; that they transport but very little to market, and usually travel on foot ; and they protest against being taxed, by means of a toll-gate, for passing over a road which they have done much to improve, and which is in a condition to answer every necessary and useful purpose. They also deplore the probability, in case the grant be made, of the erection of a tavern on their reservation, by one of the applicants, who is represented as a person addicted to habits of gross intemperance, and whose example and habits would have a demoralizing and pernicious influence upon the Indians, if suffered to reside amongst them.

Upon a review of the whole ground, the committee are of opinion that the prayer of the petitioners ought not to be granted ; they have accordingly instructed their chairman to report the following resolution :

*Resolved*, That the petitioners have leave to withdraw their petitions.

**No. 217.**

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**IN ASSEMBLY,**

**February 25, 1832.**

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**REPORT**

**Of the select committee, on the petition of Anthony Brooks and others.**

Mr. Seymour, from the select committee to whom was referred the petition of Anthony Brooks, collector of taxes in the first ward of the city of Albany, John Van Keuren of the second ward, John Buckbee of the third ward, Elias Vanderlip of the fourth ward, and John Bowne of the fifth ward,

**REPORTED :**

That the petitioners represent, that by the existing laws, they are allowed until the first of March to collect the taxes of said city. That in the present year, they have found it next to impossible to comply with the provisions of the laws as to said collectors. The winter having been peculiarly severe for the poor, they have been compelled to show greater indulgence than on any former occasion ; and if compelled to collect the small taxes, such as are generally deferred until the last, in order to accommodate the poorer class, they will be obliged in many cases to do it by distress and sale of their property. The facts are corroborated by the certificate of the mayor and recorder of the city. Your committee believe them true, and that the prayer of the petitioners ought to be granted. They have accordingly instructed their chairman to ask leave to bring in a bill for their relief.





**No. 218.**

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**IN ASSEMBLY,**

**February 24, 1832.**

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**ANNUAL REPORT**

**Of the New-York Dry Dock Company.**

*Statement of the Funds of the New-York Dry Dock Company,  
31st December—1st January, 1831-2.*

Original capital stock, . . . . .	\$700,000 00	
Reduced by act of 22d April, 1831, . . .	280,000 00	
	<hr/>	\$420,000 00
Loan from the bank of the New-York Dry Dock Company, . . . . .		21,457 49
Profit and loss, . . . . .		9,367 52
		<hr/>
		\$450,825 01

Real estate, including railways, fixtures, &c. . . . .	\$505,383 68	
Steam-boat and other personal proper- ty, per books, . . . . .	23,785 31	
Debts due the company, . . . . .	1,656 02	
	<hr/>	\$530,825 01
Reduced by act of 22d April, 1831, . . .	280,000 00	
	<hr/>	\$250,825 01
Banking capital, . . . . .	200,000 00	
	<hr/>	\$450,825 01
		<hr/>

**Statement of the Funds of the Bank of the New-York Dry Dock Company, 31st December—1st January, 1831-2.**

Capital stock, .....	\$200,000 00
Notes in circulation, .....	128,855 00
Debts due to other banks,.....	28,681 18
Deposites,.....	88,395 82
	<hr/>
	\$445,932 00

Banking-house, .....	\$15,000 00
Bills discounted and loans,.....	312,627 69
Loan to the New-York Dry Dock Co.	21,457 49
Plates, paper, furniture, &c.....	2,411 27
Debts due from other banks, .....	77,928 02
Specie, .....	16,507 53
	<hr/>
	\$445,932 00

STATE OF NEW-YORK, }  
CITY OF NEW-YORK, } ss.

Ezra Weeks, President, and  
William Stebbins, Cashier of the New-York Dry Dock Company,  
being severally duly sworn, do depose and say, that the annexed  
statements contain a full and true account of the amount of the capi-  
tal stock of the said company, appropriated to and employed in the  
bank of the said company; the amount of debts due to and from  
the said corporation, distinguishing such debts as may have accrued  
from banking operations, from the other debts of the corporation;  
the amount of bills and notes emitted by the bank in circulation,  
and the amount of specie at the time of making the statement, ac-  
cording to the best of their knowledge and belief.

E. WEEKS, *President.*

W. STEBBINS, *Cashier.*

Sworn before me, this 21st  
day of February, 1832.

PHILO T. RUGGLES,  
*Commissioner of Deeds.*

**No. 219.**

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**IN ASSEMBLY,**

**March 13, 1832.**

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**REPORT**

**Of the select committee, on the petition of Harvey  
H. May, and others.**

Mr. Collins, from the select committee, to whom was referred the petition of Harvey H. May, and others, praying for the passage of a law authorizing the said Harvey H. May to erect a dam across the Genesee river, in the town of Amity, in the county of Allegany,

**REPORTED :**

That they have examined the subject, and that the following are the principal reasons for granting the petition of the said applicant.

The Genesee river, across which it is proposed to erect the dam mentioned in said petition, is a public highway ; but at the place proposed to erect said dam, it has neither been navigated, nor put in a state of navigation ; that the country is well stored with valuable pine timber, and that it would be of great advantage to the petitioners, as well as to the inhabitants of said town generally, to enable them to convert the timber, now an incumbrance on their lands, into merchantable lumber ; that the construction of said dam, will not, in the opinion of your committee, in the least, impair the navigation of said river.

Your committee being well satisfied of the truth of the above assigned reasons ; and believing no injury will result to the public, and much benefit to the immediate inhabitants by the erection of said dam, have directed their chairman to ask leave to introduce a bill according to the prayer of the said petitioners.

**J. B. COLLINS, *Chairman.***

**[A. No. 219.]**



**No. 220.**

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**IN ASSEMBLY,**

**March 16, 1832.**

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**REPORT**

**Of the Adjutant-General, on the petition of sundry officers of the 4th brigade of State artillery, referred to him by the honorable the Assembly.**

**ADJUTANT-GENERAL'S OFFICE, }  
15th March, 1832. }**

**SIR—**

**I have the honor to transmit herewith, a report upon the petition, "of sundry officers of the 4th brigade of State artillery," referred to me by the honorable the Assembly, on the 12th instant.**

**I am, very respectfully, Sir,**

**Your obedient servant,**

**JOHN A. DIX.**

**To the Hon. CHARLES L. LIVINGSTON,  
Speaker of the Assembly.**



# **REPORT, &c.**

**ADJUTANT-GENERAL'S OFFICE, }**  
**15th March, 1832.**

The Adjutant-General, to whom was referred "the petition of sundry officers of the 4th brigade of State artillery, and others, for a change in one of the companies of said brigade,"

## **RESPECTFULLY REPORTS:**

The prayer of the petitioners is, that "the company of light artillery attached to the 19th regiment N. Y. State artillery, 4th brigade, commanded by captain James T. Shethar, shall have and enjoy all the rights, privileges and exemptions, and be subject to all the duties as to the number of parades, both of officers, non-commissioned officers, musicians and privates, and liable to the same penalties, which are granted to, and imposed upon, the first and sixth brigades of N. Y. State artillery."

Under the general provisions of the statute, to which the company is now subject, its members are required to parade three times annually, once with the regiment, to which they are attached, once by company, on the first Monday of September, and once by company at such time and place as the captain may direct.

Their exemptions are as follows:

1. They are, after serving fifteen years, exempt from all military duty, except in case of insurrection or invasion:
2. They are exempt from serving on any jury during their term of military service:
3. The non-commissioned officers and musicians are entitled to a deduction from their labor on the highways, or from their commutation for such labor, of two days.

If the prayer of the petitioners were to be granted, they would become subject, with regard to "right, privileges, exemptions, du-

ties as to the number of parades, and penalties," to the provisions of article second, title tenth, chapter tenth, part first, of the Revised Statutes.

Under the provisions of this article the members of the company would be required to be called out for exercise at least eight, and not exceeding twelve times, in each year, including the regimental parade : section 41.

Their exemptions would be as follows :

1. The weapons, accoutrements and equipments, with which they are provided, together with every horse actually enrolled for service and belonging to any member of the company, would be exempt from seizure by execution : sections 30 and 31 :

2. Every officer, (his resignation being regularly accepted,) would be exempt from military duty, after serving faithfully six years, except in case of insurrection or invasion, and he could, in no case, be compelled to serve in a grade inferior to that which he had previously held : section 32 :

3. Every non-commissioned officer, musician and private would be exempt from military duty, after seven years service, except in case of insurrection or invasion : section 33 :

4. Every officer, non-commissioned officer, musician and private, actually and faithfully serving, would be entitled to a reduction of 1000 dollars from the amount assessed upon him by the assessors, as the value of his property, and the residue would be the sum for which he would be assessed ; sections 34 and 35 :

5. Every officer, non-commissioned officer and private, so serving, would be exempt, during his term of service, from serving on any grand or petit jury : section 36.

There is also a difference in the penalties annexed, in the two cases, to offences and delinquencies ; but these it is deemed unnecessary to state in detail. They may be seen by a reference to section 52 of this article, and to article first, title seventh, chapter tenth, part first, of the Revised Statutes.

The object of the petitioners is to gain additional privileges, in consideration of additional duties, which they are willing to perform.



The objection to granting their prayer, is, that many of the provisions of this article, prescribing duties and securing privileges, are, from the nature of the case, wholly inapplicable to them, and could not, therefore, be fulfilled in the one case, or enjoyed in the other. A few instances will illustrate the difficulty of applying these provisions to them :

1. The 38th section requires the commanding officers of brigades to exercise their officers "at least four times in each year," and the commanding officers of regiments to exercise their "commissioned and non-commissioned officers at least twice in each year." The intention of this provision is, that the officers shall be exercised six times annually, in addition to the company parades required by section 41. But as an act in conformity with the prayer of the petitioners would not make it obligatory on the commanding officer of the 4th brigade of artillery, to which they belong, to exercise the officers, the effect of such an act would be to exact specific duties, without creating an authority to enforce them, and without making any one responsible for their performance. The officers would, in fact, enjoy the privileges secured to them, without the necessity of performing the duty, in consideration of which the privileges are granted.

2. Section 41 provides that the troops of light artillery annexed to regiments, &c. may be ordered out for exercise by the commandant of the regiment, at least eight, and not more than twelve times in each year, &c. This is the only provision for exacting the duties which would devolve on the petitioners, should their prayer be granted ; and it would not be obligatory on the commandant of the 19th regiment, without a specific provision to that effect, to call them out as the law intends. It might be supposed that good faith would require him or the captain of the company to see that the duties should be performed ; but if there were no specific provision making it their duty to do so, they could not, without a forced construction of law, be made responsible for neglecting it. Should the company not be called out, there might be reason to doubt whether its members, if they had been constantly armed and equipped, according to law, and ready to discharge their duty, would not be entitled in equity to an exemption after serving seven years ; whether they should be deprived of benefits secured to them by the law in consequence of a failure on the part of their superiors to exact services, which they had held themselves at all times in readiness to perform. Much embarrassment might arise on all these points ;

and it is of the utmost importance that laws securing privileges in consideration of services, and annexing penalties to the non-performance of the latter, should be carefully guarded against obscurity; there should be no possibility that the parties concerned could enjoy the privileges without performing the services, or that the penalties should be incurred through a misapprehension of their obligations by those on whom they would fall.

3. Section 49 provides for the trial of captains and subalterns of the first and sixth brigades of artillery in a certain manner by the court martial of the brigade, to which they belong. It is the right of those officers to be tried in this manner; and this right, so far as it is capable of being enjoyed, would be extended to the officers of captain Shethar's company. But brigade courts martial for the artillery are authorized only in the city of New-York, and such an act as the petitioners ask would not give the commanding officer of the 4th brigade of artillery the authority to institute one. In the interior of the State, the regimental court martial, in all essential particulars, stands to the regiment in the same relation, in which the brigade court martial in the city stands to the brigade. The question might possibly arise whether the officers of the company should be tried by the regimental court, or by a court martial instituted under article first, title sixth, chapter tenth, part first, of the Revised Statutes; or whether a plea to the jurisdiction of one or both of these courts would not be fatal to a prosecution commenced before them. If not amenable in one of these modes, they could not be tried for delinquency at all; and if amenable in either mode, it would be by virtue of a construction of the law drawn from the inapplicability to them of a right enjoyed by others under the same provisions.

4. Under section 42, the commissioned officers of the company would be entitled to be warned by the sergeant-major of the regiment; and, the terms of this section being imperative, it might be questioned whether a warning in any other mode would be good, if its legality were to be contested. Yet an act drawn in conformity to the terms of the petition, would not make it obligatory on the sergeant-major to perform the duty; and it would be extremely oppressive, without admitting him to a participation in the privileges sought by the petitioners, to require him to perform it.

The foregoing instances illustrate the difficulty of applying in general terms to the case of the petitioners provisions intended for cases in many respects totally different. It is true this difficulty might be obviated by an act specifying in detail the rights, privileges, and

exemptions, which the petitioners should enjoy, and the duties and penalties to which they should be subject. But it will be worthy the serious consideration of the Legislature, if it be thought expedient to pass a law to meet the wants of this company, whether it would not be necessary in order to do equal justice to others, to extend, by a general provision, to every company, which may voluntarily assume the same burdens, the enjoyment of the same privileges and exemptions. The force of this suggestion will be the more apparent when it is considered that there are in the interior of the State, nineteen companies of light artillery, regularly organized into regiments and brigades. The Adjutant-General would, in any event, deem it indispensable that every precaution should be taken to secure the performance of the services required, by imposing on the proper officers the responsibility of exacting them, and to point out by provisions, of which the intention shall be clear and manifest, the duties and privileges of all concerned.

His opinion is, that the prayer of the petitioners ought not to be granted.

Respectfully submitted,

JOHN A. DIX.



**No. 221.**

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**IN ASSEMBLY,**

**February 25, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the county of Chautauque.**

Mr. Tilford, from the select committee to whom was referred the petition of sundry inhabitants of the county of Chautauque, for the appointment of commissioners to locate the public buildings for that county at a more central and convenient site,

**REPORTED :**

That the public buildings for the county of Chautauque are at present situated in the village of Mayville, at the head of the Chautauque lake, where they were originally located at the organization of the county. That the true geographical centre of the county may be some few miles southeasterly from Mayville, on the eastern side of the Chautauque lake ; and your committee are informed that the signers of the petition under consideration, reside in this section of the county. To attain a site for the public buildings, more nearly approximating to the geographical centre of the county, seems, from the memorial of the petitioners, to be the principal reason for asking the appointment of commissioners. Your committee have examined the map of the county of Chautauque, and sought information from other sources, upon which they think they may rely, with regard to the present and any other probable location of the public buildings, and the roads and channels of communication with each respectively, to enable them to estimate the advantages, if any, which the public would derive from a change of location ; your committee believing the Legislature would not deem it expedient to appoint commissioners, unless they should be satisfied that a change of location ought to take place.

From an inspection of the map of the county, it will be seen, that although the village of Mayville is not entirely central in point of territory, yet it does not differ widely from it ; and that no site can be got, more central, without throwing the Chautauque lake, which stretches twenty miles through the middle of the county, across the course of the population south and west of it, and compelling them either to go round, or cross it by ferries. This lake, which, with such a location, could not fail to be a serious obstacle, is, for the present location, by the aid of a daily steam-boat, which plies regularly between Mayville and Jamestown during the season of navigation, a very great facility and convenience ; and if distance may be estimated by the time occupied and the expense incurred in overcoming it, the present site of the public buildings, in reference to all the southeastern portions of the county, may be considered as advanced towards them at least half the length of the lake. This view of the subject would bring the public buildings, where they now are, very little different from the true geographical centre of the county.

From the information your committee has derived from sources on which they can rely, it appears that the most populous parts of the county are upon the northern side, along the great road leading up Lake Erie, and in the towns about the Chautauque lake and the waters discharged from it, constituting valuable mill streams ; all of which are obviously better accommodated with the present site, than they could be with any contemplated by the petitioners.

That in this county, as in most others where the public buildings were located at the commencement of the settlement of the county, the roads and communications have been laid out and opened with reference to their site ; and that what has tended more especially to produce this state of things in the county of Chautauque, as your committee are informed and believe, is, that the land-office of the Holland Company, the proprietors of the whole territory of the county, was, at an early day, fixed at the present centre of the county, where it still continues. This office being the source from which the titles to all the lands of the county originate, has necessarily called to it, and still continues to call to it, a large portion of the population of the county, more or less frequently every year ; and while it has in some measure given direction to the roads and communications to it from the various sections of the county, it has been found a matter of very great convenience, both to the office and the

settlers, to have the county clerk's office where their deeds are to be recorded, and all examinations of title had, near at hand.

Your committee have no doubt, that under the existing state of the roads and communications in the county, the present location of the public buildings better accommodates its population than any other that could be selected. Your committee deem it proper, moreover, at least to state, that the village of Mayville, which now contains about five hundred inhabitants, commenced its settlement with the location of the public buildings at that point; and the village plot has been sold out, and prices regulated in reference to the existing state of things. The county has also incurred the expense of a very substantial fire-proof clerk's office, at the present site of the public buildings.

Your committee are also informed that there is now pending upon the general orders of this House, a bill from the Senate, based upon a resolution of the board of supervisors of the county, requiring that board to raise the sum of three thousand five hundred dollars, for the rebuilding of the jail at its present location; against which no remonstrance has been offered or objection made, unless the memorial under consideration may be so regarded. In view of all these circumstances, your committee ask leave to offer the following resolution:

*Resolved*, That the prayer of the petitioners be denied.





**IN ASSEMBLY,**

**March 17, 1832.**

---

**REPORT**

**Of the minority of the committee, on the militia and public defence.**

**Mr. Myers, chairman of the committee on the militia and public defence, dissents from the report made by a majority of the committee, for the following reasons :**

**Because he deems more than one parade in each year unnecessary, as respects public defence, oppressive to the great body of the people, expensive in money and time, and productive of intemperance, vice and immorality,**

**Because he deems the uniformed volunteer corps the best school to cultivate military science in time of peace, and the best defence of our country in time of war, insurrection or invasion ; and because, in case of war, the non-commissioned officers and privates composing such corps would, if necessary, furnish instructed officers and non-commissioned officers to the great body of the militia.**

**Because he believes that the objects contemplated by the general government will be fully answered by keeping the militia enrolled and inspected, and returned to the Adjutant-General once a year.**

**Because he believes that two or three parades in a year is insufficient to drill the militia, or to make them capable of acting as a compact and efficient body to oppose a well disciplined regular force.**

**Because he believes that the militia of our country are sufficiently acquainted with the use of fire arms to make them eminently useful to act on the flanks of regulars or well disciplined volunteer corps, and that when employed on such service, they will, from the nature and necessity of the case, learn more of military duty in one month**

than they would during their whole lives, by turning out two or three times a year for drill and improvement.

Because, under the present system, the duty is involuntary, and the only object of the great body is to comply with the law, save their fines, and get from parade as soon as possible.

Because time is money, and the great body of militia are composed of laboring classes of the community, whose burthens should be made as light as possible by an enlightened Legislature.

M. MYERS.

**IN ASSEMBLY,**

**March 17, 1832.**

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**REPORT**

**Of the standing committee on the militia, on the subject of electing or appointing to office the officers of the militia of this State.**

**Mr. Genet, from the standing committee on the militia and public defence, to whom was referred the memorial of a committee representing the officers of the several corps of the militia in the city and county of Albany, on the subject of electing or appointing to office the officers of the militia of this State,**

**REPORTED :**

**That they have taken into the most serious consideration, not only the memorial aforesaid, but also the various plans afloat among military men, and others, for the alteration of our present militia system; and without attempting to express any opinion in favor, or in opposition to those various plans, they have taken for their compass the constitution of the United States, and the revised constitution of this State.**

**The federal constitution, art. 1, sec. 8, empowers Congress to provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.**

**The State constitution, revised in the year 1821, regulates the appointment and election of the militia officers, with the proviso, "that in case the mode of election and appointment of the militia**  
**]A. No. 223.]**

officers thereby directed, should not be found conducive to the improvement of the militia, the Legislature may abolish the same, and provide by law for the appointment and removal, if two-thirds of the members present, in each house, concur therein."

The words of the clause aforesaid, of the federal constitution, are clear and peremptory. We must organize, arm, and discipline our militia, and train them according to the discipline prescribed by Congress, ready to be called out according to art. 1, sec. 8, of the constitution of the United States, to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

To accomplish faithfully those constitutional duties, your committee are of opinion that the laws of this State, now in vigor, concerning the duties and exercises of the militia, have reduced as much as is consistent with reason, the time which must indispensably be appropriated to acquire, by exercises, the rudiments of an art, which practice alone can render more perfect.

Your committee are aware that the temporary burthens attending militia duty, and some irregularities, almost inseparable from large collections of men, have excited, and will continue to raise discontents, and complaints. But there is no remedy to the first obligation; the military is, in a free country, a tax that every able bodied man is obliged to pay to his country, amply compensated by the innumerable advantages derived from a free government; and as to the irregularities in the police observed at the public parades, the commanding officers, and not the institution, are responsible for it.

Your committee cannot admit of any difference between the uniformed and the non-uniformed militia; they are all the children of the State, all equal in the eye of the law, and would all serve their country with equal courage; but your committee cannot praise too highly the civic ambition of those, who, in the country, give, by their dress, and improvement, an additional lustre to our military parades, and a useful example to the rest of the corps.

They also applaud the zeal and exertions of those public spirited young citizens, who, in our large cities, where multitudes crowd every day from various parts of the world, contribute effectually, by their martial appearance and military display, to maintain public

order, being always ready to strengthen the arm of the civil authority; a valuable security, which the merchants, manufacturers and men of property ought to weigh in the balance of their own interests, when some of them murmur at the loss of a few days devoted willingly by their children, apprentices or servants to military exercises.

Your committee cannot refrain from expressing their indignation at the late attempts made by a few discontented people in several parts of this State to turn the militia trainings into ridicule and contempt. The militia having justly been considered by the political father of our country as the main support of a free government, it is effectually an attack upon the government itself, to villify that support.

Your committee have also had under consideration the alteration of which the mode of election prescribed by the revised constitution of 1821, for the militia officers, might be susceptible; and having maturely investigated whatever has been represented against that mode, they do not think that sufficient reasons have been alleged to recommend its alteration.

The soldiers are the best judges of the merits of their officers, or of those among them who are best qualified to be raised to office, and it is a fact, that in general their choices have been judicious and prudent. The republican cause would be more injured than benefitted by a change of system which would vest the appointment of officers in the executive branch, and take it from the people. Frequent changes in organic laws, destroy confidence and prostrate what ought to be held sacred.

Your committee, after mature consideration, and a full view of all the circumstances under which they report, are of opinion that it would be unadvisable, at this time, to make any change in the militia law of this State.

They are the more strongly confirmed in this opinion by the fact, that a bill providing for material alterations in the organization of the militia throughout the Union, and embracing, sub-partially, the propositions contained in the report of the Adjutant-General of this State to the Senate, has recently been reported to Congress, and that the subject is thus distinctly presented to the consideration of those to whom the Constitution of the United States has confided the responsibility of regulating its most important details.

If the Legislature of this State has the authority to reduce the number of parades, or to change in any manner the existing organization of the militia, it would seem inexpedient to introduce alterations which might by possibility come in conflict with the arrangements of an authority in some respects paramount to theirs, at the moment when the subject had been submitted for examination by the latter.

Your committee have also had under consideration the resolution of the 6th January, in the words following, to wit: "*Resolved*, (if the Senate concur,) That the Senators in Congress from this State be instructed, and the Representatives of the people of this State in Congress be requested, to use their exertions to procure such an alteration of the act of Congress passed in the year 1792, organizing the militia of the *United States*, as shall exempt from the performance of military duty, *all* such citizens as shall not have attained the age of *twenty-one*, or shall have passed the age of *forty* years:" and for the reasons given in this report, are of opinion that it ought not to be adopted by this House.

In conclusion, your committee recommend the adoption of the following resolution:

*Resolved*, That the committee representing the officers of the city and county of Albany, have leave to withdraw their petition.

**No. 224.**

**IN ASSEMBLY,**

**March 12, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the county of Sullivan.**

Mr. Hiram Bennet, from the select committee, to which was referred the petition of sundry inhabitants of the county of Sullivan,  
**REPORTED :**

That the petitioners represent, that the whole of the northern part of said county lies within the bounds of the Hardenburgh patent; that great lots No. 1, 11, 12, 13, 14, 15, 16, 17, 18, 27, 28, 29, 30, 31, 32, 33 and 34 of the said patent are wholly situated within the said county, and that much the largest part of great lots No. 2, 3, 4 and 5 are also situated within said county of Sullivan. And the petitioners further represent, that the county of Sullivan was formerly a part of the county of Ulster, and that a great number of maps, field books, surveys and other papers relating to said great lots, are deposited at Kingston in the office of the clerk of the county of Ulster. And the petitioners further represent, that the title to lands in the Hardenburgh patent are in many cases unsettled, and that suits and litigations in relation thereto very frequently occur, and that in such events the production of the said maps, field books, surveys and other papers, as evidence, is often essential, and the parties have heretofore been put to much trouble and great expense in procuring exemplifications or copies thereof, or in obtaining the attendance of the clerk of the county of Ulster with the same, as a witness at Monticello, the place of holding courts in the said county of Sullivan, a distance of about fifty miles from the said village of Kingston.

The committee from these facts are of opinion, that the prayer of the petitioners is reasonable and ought to be granted, and have directed their chairman to report a bill.





**No. 225.**

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**IN ASSEMBLY,**

**February 25, 1832.**

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**ANNUAL REPORT**

**Of Andrew H. De Witt, an Inspector of Lumber for  
the city of Albany.**

*To the Honorable the Legislature of the State of New-York.*

**Statement of lumber inspected by Andrew H. De Witt, in the  
year 1831.**

First quality pine lumber,.....	54,259 feet.
Second       "       "       .....	64,919 "
Third       "       "       .....	247,217 "
Fourth       "       "       .....	1,086,644 "
First quality whitewood plank,....	49,954 "
Second       "       "       ....	50,362 "
First quality basswood plank,.....	2,255 "
Second       "       "       .....	5,646 "
Whitewood boards,.....	635,935 "
Basswood boards, .....	40,814 "
Cherry boards, .....	128,519 "
Ash plank, .....	90,813 "
Maple boards, .....	11,931 "
Black walnut boards, .....	8,898 "
Oak boards, .....	4,915 "
Spruce and hemlock timber, .....	196,980 "

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**Total quantity inspected,..... 2,650,061 feet.**

**Amount of fees received,..... \$864 42**

**ANDREW H. DE WITT,  
Inspector.**

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY

OF THE UNITED STATES

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**No. 226.**

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**IN ASSEMBLY,**

**March 17, 1832.**

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**REPORT**

**Of the committee on canals and internal improvements, on the petition of George Clarke.**

The committee on canals and internal improvements, to whom was referred the petition of George Clarke, praying for the passage of an act extending the period within which application may be made for the appraisal of damages occasioned by the construction of the canals belonging to this State, for six months from the passage thereof,

**RESPECTFULLY REPORT:**

That the petitioner represents that he is the owner of a large portion of the patent commonly called the Oriskany patent, situate in the county of Oneida; that the Erie canal runs through the whole width of the said patent for a great distance, near the west bank of the Mohawk river, leaving portions of land between that river and the canal so small as to be useless for cultivation; that in other places, the canal runs so near the public road as to cut off other small pieces not worth inclosing; that in consequence of the canal bank being raised higher than the level of the land, on the westerly side of the canal, much land of the finest quality has been rendered swampy and unfit for cultivation; that the Canal Commissioners have turned the waters of Wood creek and destroyed a valuable mill-site belonging to the petitioner, estimated to be worth five hundred dollars; that his land in the vicinity of Rill Lock has been extensively injured, and several acres of meadow land of the first quality ruined; that extensive injury has been done to a large dwelling-house and other buildings situate at the junction of the Rome and Erie canals.

That believing he had a just claim against the State for those damages, during the last summer he caused surveys and estimates to be made, for the purpose of presenting his claims to the Canal Appraisers, but was prevented from doing so by discovering that by a clause of the statute relating to canals, all claimants for damages occasioned by them were required to make application before the 1st day of January, 1823.

That to sustain his claim, he relies upon that clause of the constitution of the United States, which prohibits the taking of private property for public use, without just compensation, and a similar provision of the constitution of this State, which he conceives cannot be abrogated by legislative enactment without a previous appraisal and tender of payment on the part of the State.

That he is fortified in this construction strongly by the third section of the act respecting "navigable communications between the great western and northern lakes, and the Atlantic ocean," passed the 15th day of April, 1817, which requires the Canal Commissioners to apply to the Supreme Court for the appointment of appraisers to make appraisal of all damages sustained by the owners of all lands, &c. not released by them to the State, and to make an entry in proper books of such damages, if any, and to pay the same, if any, and then, and not until then, the fee simple of the said lands, &c. shall be vested in the people of this State.

That by the said constitutions and statute, the appraisal and payment are acts to be performed by the State, before any title can vest in them, and that until the performance of those acts, he was clothed with vested rights which could not be taken away by any legislative enactment.

That the petitioner verily believes that the damages he has sustained exceed three thousand dollars.

The important amount claimed by the petitioner, and the still more important principles involved in this case, have induced your committee to devote all the time and attention in their power to its consideration.

The Erie canal was commenced, and the lands of the petitioner appropriated by the State in the summer of the year 1817, and that section of the said canal was completed about the year 1820. The

~~State have continued in possession of the lands mentioned by the petitioner ever since the first mentioned time.~~

The Canal Appraisers from time to time, as applications were made to them, met in the vicinity of the lands of the petitioner, and at various other places along said section of the canal, to make appraisal of damages arising from its construction.

It has been, as your committee are advised and believe, the uniform practice of the Appraisers to meet for the discharge of their duties as often as applications have been made to them, and the petitioner might at any time within twelve years prior to the first day of January, 1829, have had the damages now claimed by him appraised.

After the damages occasioned by the making of the Erie canal had been generally appraised, and difficulties began to arise in deciding the remaining claims which were from time to time presented to the appraisers, owing to the lapse of time and the great changes effected by the canal, in the country through which it was located, it became apparent that unless some limitation was fixed to such demands, great injustice must be done, and the interests of the State materially affected. Claimants appeared, prepared with witnesses to support demands which had lain dormant eight or ten years, and were forgotten by the officers entrusted with the care of the canals, and their utmost exertions to develop the facts and circumstances connected with them, were entirely insufficient to protect the public against the efforts of individual industry, stimulated by private interest. There were no officers especially assigned to defend the State against the real or pretended claims of such individuals, and the Canal Commissioners, overburthened with the extremely laborious duties of their stations, had neither time nor opportunity to follow and search out the dispersed witnesses necessary to the due investigation of such demands.

To remedy these evils, and effect as soon as possible the final settlement and discharge of all the remaining claims against the State for damages occasioned by the construction of the canals, provision was made in the 48th and 49th sections of the third article of the ninth title of the ninth chapter of the Revised Statutes, which commenced and took effect on the first day of January, 1828, requiring every person interested in premises appropriated for the use of the canals, if he intended to make any claim for damages, to

present the same to the Canal Appraisers within one year from the time such premises should be taken for the use of the State, and every person who should neglect or refuse to exhibit such claim within the time prescribed, should be deemed to have surrendered to the State his interest in the premises so appropriated; and that no claim for damages for premises that should have been appropriated to the use of a canal at any time before the said chapter should be in force, should be received by the appraisers, unless it should be exhibited within one year after the said chapter should become a law. That the premises so appropriated should be deemed the property of the State, and no claim other than those so exhibited should be paid without the special direction of the Legislature.

The claims set forth in the petition, in this case, fall within the provisions of the 49th section above cited, and are barred by it, unless the Legislature, for the reasons assigned by the petitioner, shall be induced to extend the time for making appraisals in such cases. To your committee those reasons appear entirely insufficient to justify a measure which will, in effect, repeal all limitation of such demands.

The beneficial effects of those statutes which bar the prosecution of stale and antiquated demands existing between private citizens, have been too long and too satisfactorily proved by experience, to require any argument of your committee to vindicate the wisdom and sound policy in which they are established. Yet they cannot refrain from adverting to one among the most obvious reasons for their enactment; which is, that the great difficulty of arriving at the exact truth of transactions long past, owing to the fallibility of memory, the loss of evidence by the absence or death of witnesses, or the loss or destruction of documents; and the great and various changes to which all human affairs are subject, has produced great injustice in the prosecution of demands so antiquated, that the evidence necessary to establish their true character has been lost by time and accident, and which might have been avoided by requiring a vigilant pursuit of the claim while the witnesses to the transaction were living, within the power of the parties, and the circumstances remained fresh in their memories.

Your committee can not perceive that any reason exists for the limitation of the prosecution of claims against individuals, which does not apply, with equal or greater force, to demands against the State; as all experience proves that public bodies are less vigilant

in asserting or defending their rights than private persons. Your committee, in their examination of this case, have been forcibly impressed with the necessity of a limitation of claims, for damages growing out of the construction of the canals, by reason of the peculiar nature of the subject. The laws directing the appraisal of these damages require that the benefits, as well as injuries, resulting to the proprietor should be taken into the estimate, in making the appraisal.

At the time of appropriating lands or real estate to the use of the canals, or while the transaction is recent, little, if any, difficulty can arise in making a correct estimate of the benefits and injuries to the claimant, and arriving at a satisfactory conclusion; but if the proper time is suffered to pass, and the claimants are permitted to lay by and wait, until by lapse of time, the situation of the country and the particular circumstances of the property, when appropriated, are forgotten, the difficulty of making correct estimates becomes almost insuperable. It would be extremely difficult, in the ordinary state of the country, to ascertain the value of any tract of land or other portion of real estate, at a period of ten, fifteen or twenty years anterior to the time of making the inquiry, owing to the fluctuations in the value of such property, and the various opinions of different individuals upon such subjects, even in cases where but little alteration has taken place, in the actual or relative state of the property; and how much more difficult must it be to form a correct judgment of the effect produced by the construction of the canals, after an equal lapse of time. The prosecution of these great systems of internal improvement has effected the most astonishing changes in the country in which they are situated. The current of business, the tide of population, the progress of improvement, have all tended towards them. Towns and villages have sprung up and increased to great importance, in places covered with the primitive forest at the time these works were executed; and during the same period of time, in other places, towns and villages, once populous and flourishing have fallen into decay, as the advantages of location, fluctuations of business, concentration of capital and enterprise, or other advantages, local or relative, have preponderated,

After a change of circumstances so entire, it is difficult to conceive how a correct judgment can be formed of the first operation and effect of the causes which produced it. To leave it optional with the claimant to present his demand at any period of time which he may

elect, is to give him most important advantages against the State. If the damages are direct and immediate, if the value of the property is rapidly depreciating, he asserts his claim with promptness; on the contrary, if the effect is doubtful or beneficial, he lays by until the increase in the general value of the real estate of the vicinity, or other changes produced by time, present the favorable opportunity to bring forward his demands, and every error in judgment, arising from the want of correct information by the appraisers, results in prejudice to the State. It most generally happens, that, during the long neglect or intentional delay of the proprietor, the general value of property, in that section of the country, is rapidly advancing; and, in the present estimation of its worth and importance, its former insignificance is often forgotten, or but partially appreciated. But the evidence of the appropriation, by the State, forever remains indubitable. The quantity of land occupied by the canal, the injuries arising from its leakage, and its overflowing the streams appropriated as feeders, and hydraulic privileges injured or destroyed, are all obvious to the sight, while the great increase which it has occasioned in the value of the property immediate and adjacent, only tends to enhance the apparent damages arising from its construction.

By these reasons your committee believe it appears right and necessary that these claims upon the State should be promptly adjusted; and, notwithstanding the officers of the State have been, as they believe, at all times ready to liquidate and discharge them, yet they have reason to apprehend that many claims, like that of the petitioner, have been reserved to the present time, and after the period of fifteen years, still remain to be settled under all the disadvantages naturally arising from such protracted delay.

If your committee are correct in these views of the subject, it is evident that the limitation of claims for damages accruing by the construction of the canals, is founded in the soundest policy and sustained by the most imperious necessity. The petitioner appears to be aware of the propriety and expediency of the limitation, and the insuperable obstacle it presents to his claim. He, therefore, endeavors to destroy its effect by alleging it unconstitutional and void, by reason of its conflicting with those provisions of the constitution of the United States, and of this State, which forbid the taking of private property for public use, without just compensation. This position he contends is strongly fortified by the 3d section of



the act of 1817, "respecting navigable communications between the great western and northern lakes and the Atlantic ocean," which directs the appraisal of such lands and real estate, &c. as may be taken for the use of the canals therein mentioned, and payment of such damages to be made; and declares that the fee simple of the premises so appropriated shall be vested in the people of this State. This he alleges renders the appraisal and payment of the damages a condition precedent.

This point your committee have considered with all the attention its importance seemed to demand, and after the most mature consideration have found themselves compelled to a different conclusion.

Although the constitution does prohibit the taking of private property for public use without just compensation, yet it does not prescribe the time or manner of making such compensation; and although the statute of 1817 directs the appraisal and payment of damages, it does not make those acts conditions precedent to the occupation of the lands and real estate appropriated to the use of the canals, but on the contrary, the whole statute proceeds upon the ground of a prior appropriation and occupancy as the foundation of the appraisal.

This question has been before your Supreme Court, in the case of Bradshaw against Rogers & Magee, and your Court of Errors; in the same cause, upon a writ of error between the same parties, and it has been decided in the Supreme Court, and the judgment affirmed in the Court of Errors, that neither the constitution nor the act of 1817 made the appraisal and payment a condition precedent to the appropriation of lands and real estate to the use of the canals, but on the contrary, that such appropriation may be made without those acts being first performed, and when so done, it creates under the constitution a debt or liability on the part of the State to make just compensation for such private property.

Of the soundness of this construction, your committee do not entertain a doubt, but if there was room for question, it appears to them to be put entirely at rest by the last clause of the tenth section of the seventh article of the constitution of this State, which declares that the navigable communications of this State "shall be and remain the property of this State."

That the people of this State have the power by constitution to appropriate private property to public use, with, or without compensation, cannot be doubted; and if the claims of the petitioner for compensation are not affected by the constitutional appropriation of his property to public uses, still that appropriation is valid. The right of property is changed, and there only remains to the former proprietor a claim upon, or debt against the State for its value.

Your committee are unable to discover any difference between a debt so contracted for property taken for public use, and any other debt against the State due upon just consideration. They therefore conclude that such debts are as much subject to the operation of a statute of limitation, as if the constitution was silent upon the subject.

It appears by the petition in this case, that the damages claimed, accrued upon the commencement of the Erie canal, in the year 1817, and that the petitioner has not, until the present time, presented any claim against the State for them. The only reason assigned for this delay, is, that he did not learn until the year 1830, that any existing law required him to present them before that time.

To your committee this excuse appears entirely unsatisfactory; and they do not consider it unjust to apply to this case, as a presumption of fact, the conclusion that the petitioner voluntarily relinquished all claims for damages, in consideration of the benefits conferred upon him by the construction of the canal.

Your committee are informed, and believe, that those benefits have been of great value to the petitioner, far exceeding any injury he has sustained, and that his real estate, through which the canal passes, is by means of it, greatly increased in value, thereby abundantly compensating him for his alleged damages.

The constitution does not require a payment in money, and your committee believe that the benefits so conferred on the petitioner are as much the just compensation required by it, as any direct payment would be.

It also appears that this claim is barred by the 49th section above referred to, limiting claims of this nature to the first day of January, in the year 1829, and no satisfactory cause is shown to exempt this case from its operation.

Believing, as your committee do, that law to be perfectly consistent with the constitution, and necessary and expedient in itself, and that to modify or suspend it, according to the prayer of the petitioner, will open the door to all the antiquated claims which may be raked up from the oblivion in which they have been so long left by the design or neglect of the claimants, and expose the State to a great mass of factitious and fraudulent demands, difficult to resist and ruinous to satisfy, they cannot believe that sound policy, or a due regard to justice and the public good require that the prayer of this petition should be granted. They have therefore directed their chairman to prepare and present to the House the following resolution.

*Resolved*, That the prayer of the petitioner ought *not* to be granted.

E. HOWELL, *Chairman*.



**No. 227.**

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**IN ASSEMBLY,**

**March 17, 1832.**

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**REPORT**

**Of the Commissioners of the Land-Office, on the petition of the inhabitants of the village of Oswego.**

**The Commissioners of the Land-Office, on the petition of the inhabitants of the village of Oswego, referred to them by the honorable the Assembly,**

**RESPECTFULLY REPORT:**

**That the petitioners set forth, in substance, that it is necessary, for the purpose of accommodating the commerce of the village with sufficient wharves, and also for the preservation of the channel through the mouth of the Oswego river, and for the health and convenience of the place, that the public ground, lying north of Aries-street and east of Second-street, in the village of West-Oswego, should be improved, with a view to these objects, and this can not be done by the village authorities or individuals until the State parts with its title. They pray, therefore, for relief, and ask for the passage of an act that shall authorise the president and trustees of the village to sell or convey, on durable leases, the lot marked on the map accompanying the petition as the *Fish Market lot*; and that shall authorise the Commissioners of the Land-Office to procure an appraisement of the ground before described, excluding the streets, the market lot, and what is laid out for a marine railway, and including a small island, which was heretofore a peninsula, at the mouth of the river; and to convey the same to said president and trustees on the payment of the amount of such appraisement.**

**The Commissioners of the Land-Office, from their knowledge of the place, and the formation of the ground there, are convinced that it is capable of much improvement, for the promotion of the objects**

**[A. No. 227.]**

contemplated by the petitioners: and that, for these purposes, the State should dispose of its right in the premises, which is now an obstacle to them. If this were done in the usual way, by auction, it is probable that the treasury would be most benefitted by it; but whether this mode, or any other that may be devised would subserve the interests of the village, as well as that of the State, as effectually as that proposed by the petitioners, is a subject proper for the consideration of the Legislature. It ought to be noticed that such a lot as that represented on the petitioners' map, and called the *Fish Market lot*, is not recognized on any official plan of the village. No claim, therefore, is understood, by the Commissioners, to exist, in favor of the village to this *market lot*, which does not equally exist to any lands belonging to the State, and situate within the bounds of said village.

The Commissioners consider it their further duty to state to the Legislature, that they are officially informed that considerable competition in feeling exists, as to the grounds of which the petitioners ask the pre-emptive right; and that direct offers, for the title of the State to the ground, to the amount of twenty thousand dollars, have been already made; yet the Commissioners are wholly unable to say what would be the appraised value of this ground, or whether it would exceed or fall short of this amount; and they mention the fact that it may be seen, that the interest upon which the Legislature is called to act, is more important than the extent of the territory in question might indicate. This ground is a part of the land appropriated to the Common School fund, by the constitution.

Respectfully submitted.

SIMEON DE WITT, *Surveyor-General.*

SILAS WRIGHT, JR. *Comptroller.*

A. C. FLAGG, *Secretary.*

A. KEYSER, *Treasurer.*

**No. 228.**

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**IN ASSEMBLY,**

**March 21, 1832.**

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**REPORT**

**Of the select committee, on sundry petitions of the inhabitants of the counties of Orange and Putnam, for the passage of a law to prohibit the sale of wine and spirituous liquors to the students and soldiers at West-Point.**

**Mr. Winfield, from the select committee to whom was referred sundry petitions of the inhabitants of the counties of Orange and Putnam, praying for the passage of law to prohibit the sale of wine and spirituous liquors to the students of the military academy at West Point, and to the soldiers attached thereto,**

**REPORTED :**

**That your committee have duly examined the petitions aforesaid, in relation to the passage of a law which shall restrain and prohibit every person within the distance of three miles from the military academy at West Point from selling to any student belonging thereto or any soldier attached to this place, any wine or spirituous liquors of any sort, and that they have also examined into the further application to prohibit persons from carrying or causing to be carried to the students of said academy, or to any enlisted soldier or soldiers attached to the same, any wine or spirituous liquors without the consent of the officers; that they have carefully investigated**

the premises on which these applications are predicated, and that the following conclusions are the result of their deliberations.

It is an undeniable fact that the prosperity of all our seminaries of learning, and the moral condition of the pupils depend in a great measure on the good government and moral discipline of those institutions; but while we consider a good local polity necessary to their welfare and prosperity, we deem it equally necessary that those citizens, who, from their juxta-position have always either directly or indirectly a controlling influence over the morals [of the students should be obligated to conform to the requirements of the professors or officers of such seminaries so far as may be necessary to effect the object contemplated on the organization of those institutions, especially when those requirements do not conflict with the rights and privileges of citizens.

In relation to the laws and the internal police of the academy at West Point, there can be but one opinion; that so long as no difficulties arise from any extraneous influence, they are well calculated to preserve and improve the moral character of the pupils committed to the supervision and care of its officers. But it is a fact, that notwithstanding the soundness of the laws, and the watchful care of the professors and officers, yet in consequence of the narrow limits of the United States' property at West Point, and in consequence of the circumscribed jurisdiction of the officers and superintendents, the student occasionally abuses his privileges, and in violation of the laws, passes over into those towns bordering on West Point, in this State, and from persons residing in the vicinity of this place, the student is supplied with wines and spirituous liquors, in any quantities required.

The tendency of this indulgence, your committee are satisfied, is not only subversive of the good order and discipline of the institution, but in a peculiar manner subversive of the morality of the pupils.

Your committee further think, that the same principles which are applicable to the moral government of the students at West-Point, are applicable also to the soldiers enlisted for the service of that station; and that, if a law be therefore passed to impose a restraint



**No. 228.]**

**3**

**on the venders of wine and ardent spirits, in reference to the pupils of the institution, the same law should be enforced upon the soldiers.**

**Under this view of the foregoing facts, your committee have prepared a law, which they now beg leave to submit.**







**No. 230.**

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**IN ASSEMBLY,**

**February 29, 1832.**

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**ANNUAL REPORT**

**Of the Dutchess county Bank.**

*Statement of the Funds of the Dutchess county Bank (of Poughkeepsie,) February 15th, 1832.*

**RESOURCES OF THE BANK.**

Notes discounted and other securities, .....	\$323,112 54
Specie, .....	\$14,156 96
Balances due from Phoenix bank, New-York, .....	59,088 96
Bills and checks of New-York and other specie paying banks, .....	23,914 10
Balances due from New-York and other specie paying banks, .....	5,290 61
	<hr/>
	102,450 63
Banking-house and lot, .....	6,500 00
" furniture, &c. ....	3,028 32
	<hr/>
	\$435,091 49

**DUE FROM THE BANK.**

Stock paid in, .....	\$90,000 00
Bank notes in circulation, .....	242,604 00
Balances due other banks, .....	11,698 33
Individual credits, .....	84,372 88
Nett profits on hand, .....	6,416 28
	<hr/>
	\$435,091 49

*Dutchess County, ss.*

James Emott, president, and Walter Cunningham, cashier of the Dutchess County bank, being duly sworn, depose and say, that the foregoing is a full and true account of the funds and property of the bank; that the amount of capital stock subscribed, is \$150,000, of which \$90,000 is paid in; and that the amount of specie above mentioned, is bona fide the property of the bank, and has not been borrowed or in anywise obtained with the view to make this return. And these deponents further say, that since the last annual return, the bank has kept an account in the city of New-York, in the Phoenix bank, in order to have its bills receivable and current in New-York, so that its bills might pass in the State and elsewhere without discount; and the directors have accordingly ordered such surplus funds as were not needed at the bank for its ordinary business, to be sent to the Phoenix bank to redeem its paper there; and that the sum above stated, as being in the Phoenix bank are the funds of this bank placed there for the aforesaid purpose. And these deponents further say, that the balances due other banks, as stated above, are for collections recently made for such banks and not yet remitted.

JAMES EMOTT,  
WALTER CUNNINGHAM.

*Subscribed and sworn this 27th day  
of February, 1832, before me*  
SILAS E. HAIGHT,  
*Commissioner of Deeds.*

**No. 231.**

**IN ASSEMBLY,**

**February 29, 1832.**

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**ANNUAL REPORT**

**Of N. Wilson, an Inspector of Beef and Pork for the  
county of Greene.**

**Report of the inspector of beef and pork for the county of Greene.**

**2,431 barrels prime beef.**

**435    "    mess beef.**

**74     "    cargoe beef and 8 half barrels mess beef.**

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**2,940 barrels and 8 half barrels.**

**I have also barrellled in this county for inspection in the city of New-York 842 barrels and 87 half barrels beef, making in all barrellled and inspected in this place 3,773 barrels and 95 half barrels beef. No pork offered for inspection.**

**N. WILSON.**

***Catskill, 18th January, 1832.***

**[A. No. 231.]**





**IN ASSEMBLY,**

**March 21, 1832.**

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**REPORT**

**Of the committee to whom was referred the bill from the Senate, for the division of the town of Ellicott, in the county of Chautauque.**

**Mr. Tilford, from the committee to whom was referred the bill from the Senate, for the division of the town of Ellicott, in the county of Chautauque,**

**REPORTED:**

**That they have had the bill under consideration, and find it to contain the usual and proper provisions for carrying into effect the division of the town proposed to be divided: that from the information furnished to your committee, they are disposed to believe the convenience of the people of the town would be promoted by the proposed division: that the town is now six miles in width, and twelve in length, comprising two of the Holland Land Company's townships; and that in each of these townships there is a considerable village, forming a business centre, to which most of the population of each section of the town now, respectively, resort; namely, Jamestown in the extreme western, and Kennedaville in the extreme eastern part of the town.**

**There is not, accompanying the bill, a map authenticated in the manner prescribed by the statute, though there is a diagram of the proposed division, showing, intelligibly enough, the boundaries of the new town; and indeed those boundaries being simply the boundaries of township number two, in the tenth range of the Holland Land Company's townships, are accurately laid down upon the maps of the county and State, made by Mr. Burr, with which the Surveyor-General's office is supplied.**

Your committee being satisfied, therefore, that, in the present case, no difficulty can arise in ascertaining the boundaries of the town to be erected, from the existing maps of the State, do not feel at liberty to report against the bill, for the want of a technical compliance with the statute requiring a separate and sworn map of the town, and would, therefore, recommend that, in the present case, the bill referred to them become a law, not intending, however, to relax in any degree the requirements of the statute, in any case where the boundaries of the new town may not be readily ascertained from the existing official maps of the State.

**No. 233.**

**IN ASSEMBLY,**

**February 28, 1832.**

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**REPORT**

**Of the committee on the petitions of aliens, on the  
petition of Joseph Blakie and Isabella Blakie.**

**Mr. R. B. Miller, from the committee on the petitions of aliens,**

**REPORTED :**

**That they have had under consideration the petition of Joseph Blakie and Isabella Blakie ; and at the request of the petitioners, beg leave to be discharged from the further consideration thereof.**

**Your committee beg leave further to state, that the subject matter of the petition is now before the honorable committee on aliens in the Senate, and that the petitioners are desirous of having this petition presented for their consideration. Your committee would therefore offer the following resolution :**

***Resolved,* That the petitioners have leave to withdraw their petition.**



**IN ASSEMBLY,**

**February 28, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the town of Rotterdam in the county of Schenectady.**

Mr. Crookshank, from the select committee to whom was referred the petition of certain freeholders and inhabitants of the town of Rotterdam in the county of Schenectady, praying for the passage of a law requiring applicants for private roads to pay the expenses of such applications,

**REPORTED :**

That the petitioners state in their petition, that they are annually burthened with a tax to pay the expenses of applications by individuals for their private roads, which the petitioners deem unfair and unjust ; and conclude by asking the passage of a law requiring the individuals applying for private roads, to pay all the incidental expenses attendant on the laying out of such roads.

It will be seen by reference to the first volume of the Revised Statutes, page 517, sections 77, 78 and 79, that the damages of the owner of land through which a private road is laid, shall be ascertained or assessed in like manner as if the same was a public highway, and that such damages shall be paid by the person applying for the road.

This general provision in the Revised Statutes, this committee deems sufficient to protect our citizens from unnecessary expenses ; and the payment of *all damages* to the owner of the land over which the private roads may be constructed, is sufficiently burthensome to the individual who may thus be compelled to purchase his way out from his farm to the public highway, that this additional tax of the expenses in laying out the roads ought not to be imposed on him.

The committee are therefore of opinion that the prayer of the petition ought not to be granted.



**No. 235.**

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**IN ASSEMBLY,**

**February 28, 1832.**

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**REPORT**

**Of the Surveyor-General, on the petition of Daty Allen.**

The Surveyor-General, on the petition of Daty Allen, referred to him by the Honorable the Assembly,

**RESPECTFULLY REPORTS:**

That the owners of lots numbers 67 and 68 of the South Bay tract in the county of Washington, have, under the provisions of the act, chapter 254, passed April 23d, 1823, purchased the marsh lots opposite to them; but the owners of lots numbers 69, 132 and 133, neglected to avail themselves of the provisions of the said act. The marsh lot opposite to number 69 contains 50 acres, and was appraised at 25 dollars; the one opposite to number 132 contains 14 acres, appraised at 7 dollars; and the one opposite to number 133 contains 74 acres, appraised at 18 dollars and 50 cents. These three marsh lots make up the residue, and remain unsold.

Respectfully submitted,

**SIMEON DE WITT,**

*Surveyor-General.*

*February 27, 1832.*





**No. 236.**

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**IN ASSEMBLY,**

**March 23, 1832.**

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**REPORT**

**Of the Comptroller, in obedience to a resolution of  
the Assembly of the 19th instant.**

**COMPTROLLER'S OFFICE, }  
Albany, 22 March, 1832. }**

**The Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.***

**SIR—**

**Herewith is transmitted to the honorable the Assembly, a re-  
port, made in obedience to a resolution of that body of the 19th inst.**

**I am, very respectfully,**

**Your obedient servant,**

**SILAS WRIGHT. JR.**



# REPORT, &c.

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STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

The Comptroller, in obedience to a resolution of the honorable the Assembly, in the following words :

" STATE OF NEW-YORK, }  
In Assembly March 19, 1832. }

*" Resolved,* That the Comptroller be instructed to report to this House, whether clerks have been employed under the appropriation contained in section 19 of the act entitled 'An act relative to the finances of this State, and the duties of the Comptroller, &c.' passed April 26, 1831, and if so, what portion of said appropriation has been expended, and what progress has been made under the provisions, and pursuant to the directions of the 18th and 19 sections of said act.

" By order,

F. SEGER, *Clerk.*"

## RESPECTFULLY REPORTS :

That document No. 10, of the Senate documents of the present session, contains a full statement of all the payments for clerk hire for his office, for the fiscal year ending 30th September last, the names of the several clerks employed, the time for which each was employed, and the wages paid.

That document will show that "clerks have been employed under the appropriation contained in section 19, of the act entitled 'An act relative to the finances of the State, and the duties of the Comptroller,' &c. passed April 26th, 1831," and that \$843.73 of that appropriation was expended in the payment of the wages of clerks, including \$154.50 paid to a clerk in the Manhattan company of the city of New-York, for making returns of the issues of canal stock.

The above is the "progress" made under the 19th section of the act referred to in the resolution.

The progress which has been made under the 18th section of the same act is fully detailed in the annual report of the Comptroller, (Assembly Documents of the present session, No. 4, from page 15 to 19, inclusive, and from page 31 to 42, inclusive,) to which document he respectfully asks leave to refer for the answer to the remaining inquiry contained in the resolution.

All which is respectfully submitted,

SILAS WRIGHT, JR.

*Dated Albany, 22 March, 1832.*

**No. 237.**

**IN ASSEMBLY,**

**March 23, 1832.**

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**REPORT**

**Of the committee on the petition of Charles Gardner.**

**Mr. Kemble, from the select committee, to whom was referred the petition of Charles Gardner, for authority to change his name,**

**REPORTED :**

**That the petitioner, whose name is Charles Gardner, asks leave to add to it the christian name of his father, so that he may hereafter be known by the name of Charles Asa Gardner. The petitioner is a resident of the city of Troy, and is engaged in the mercantile business. He has a cousin whose name is Charles Gardner, who is of nearly the same age, and engaged in the same business, and writes a similar hand. These circumstances have caused many difficulties and mistakes in their business transactions. The petitioner believes these difficulties would be obviated by the change of his name, in conformity to his petition.**

**The committee believe the prayer of the petitioner ought to be granted, and have directed their chairman to report a bill.**



**No. 238.**

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**IN ASSEMBLY,**

**March 24, 1832.**

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**REPORT**

**Of the Commissioners of the Land-Office, on the bill authorising a re-appraisement of certain lands in Oneida Castleton.**

The Commissioners of the Land-Office, on the bill entitled "An act authorising a re-appraisal of certain lands in Oneida Castleton, and for other purposes," referred to them by the honorable the Assembly,

**RESPECTFULLY REPORT:**

That the village of Oneida Castleton was laid out in 1813. At that time it was contemplated that the Oneida creek might be made navigable to the lake, for such batteaux or boats as were then used on the Wood creek, in ascending to Rome; and that much of the trade carried through the Seneca river and Oneida lake would be diverted from the Wood creek to the Oneida creek, and be deposited at Oneida Castleton, to be thence transported to Utica by land. The Surveyor who planned the village, laid down on the map what he called a canal, to show how the navigation of the Oneida creek might be improved, from its junction with the Sconondoa creek to the village; but no idea was advanced that such an improvement would be made at the public expense. In addition to other considerations, which entered into the estimates of the advantages of the place, was this, that it possessed water powers, which might be employed for manufactories to a great extent. With such views the first sale of the village lots was attended by the persons who became the purchasers. This was on the 18th March, 1817. Some might, possibly, have been also influenced by the views of the Canal Commissioners, expressed in their report to the Legislature on the 17th of the previous February, in these words:

[A. No. 238.]

"In this mile, (the 17th on the middle section of the Erie canal,) a feeder, of two miles and seventy chains in length, may be introduced from the Oneida creek. The feeder may be made navigable, as a lateral canal, to Oneida Castleton, a village at Oneida Castleton owned by the State. In all probability no water from the Oneida creek will be wanted for the canal; but considering that the State land at the village, and in its vicinity will be trebled in value, by this lateral canal, it will be an object to make it on that account only." (Assembly Journal of 1817, page 330.)

In whatever manner calculations, respecting the advantages of the place, may have been made, the bids at the first vendue, which were in many instances far above the minimum prices, manifested that extravagant anticipations were cherished by the purchasers. At that time the Legislature thought it proper to guard against monopolies by speculators, which then prevailed to a degree which was considered injurious to the settlement of the country; it was accordingly enacted, in chap. 252, of the laws of 1815, as follows:

"So many of said lots as the said Commissioners shall judge proper shall be sold on the further condition, that within three years thereafter there shall be erected on them, respectively, buildings to the value of two hundred and fifty dollars, under the penalty of a forfeiture of all right to the lots, concerning which there shall be a failure in this condition, and also of the monies paid for the same."

Twenty-three of the lots were, at the first sale, bought under these conditions. The part of the act, as above recited, was afterwards repealed. The first sale was restricted to a part of the lots, in accordance with the views of the Legislature, respecting monopolies.

In 1821, the remaining part of the lands within the bounds of the village were directed to be sold, and a part only were then bought, and for none was more than the minimum price bid. The unsold lots were then left to be taken on application by such persons as wished to purchase at the minimum prices, until 1826, when those that had not been taken were directed to be re-appraised, and put up for sale at the amount of the appraisement, which was, on an average, about one quarter of that of the first appraisement. All these lots have been sold, and but one for a sum exceeding the minimum price.



Twenty-three lots have been bought in for the State, at re-sales for arrears, and these, together with six blocks, remain to be sold.

By act, chap. 35, of 1822, the purchasers of lots, at the vendue in 1817, were directed to be credited with the monies paid on them, and to be charged only with the amount of their respective original appraisements.

This detailed statement, of what relates to the village of Oneida Castleton, has been deemed necessary, to enable the Legislature to form a correct opinion of the merits of the application made by the petitioners.

Respectfully submitted.

March 24th, 1832.

SIMEON DE WITT, *Surveyor-General.*  
SILAS WRIGHT, JR. *Comptroller.*  
A. KEYSER, *Treasurer.*



**No. 239.**

**IN ASSEMBLY,**

**March 24, 1832.**

**REPORT**

**Of the select committee on the petition of the mayor, aldermen, and commonalty of the city of New-York.**

Mr. M'Keon, from the select committee, consisting of the members from the city and county of New-York, to whom was referred the petition of the mayor, aldermen, and commonalty of the city of New-York, for the passage of a law to alter the map of the said city by laying out a new street in the 12th ward of said city,

**REPORTED :**

That the petitioners represent they have been lately applied to by the owners of the lands in the blocks which lie between the Third and Fourth avenues, and between Fourteenth and Thirtieth-streets, in the twelfth ward of the said city, to have a new street of the width of seventy-five feet laid out through the centre of those blocks, and running parallel with the said Third and Fourth avenues; that the said proprietors are desirous of improving that part of the city by the erection of valuable dwelling houses, but find that the present length of those blocks being nine hundred and twenty feet between the Third and Fourth avenues, is inconvenient and injurious to the value of their property, and that an intermediate street will not only enable them to lay out their ground for building lots to much greater advantage, but afford an important accommodation to those who may become residents in that vicinity.

The petitioners also state that they have carefully examined this proposition, and are satisfied that the great length of these blocks makes the distance in many respects inconvenient for those who may hereafter reside there, and that the new street now applied for

would be not only a benefit to the owners of the land through which it is contemplated to pass, but a manifest public improvement, and as such they are desirous of having the same carried into effect. As yet there are no houses erected in that particular section of the city, which could be affected in any way by laying out such new street, and the petitioners consider it important that the said street should be recognized by law as part of the plan of the city before the valuable improvements which are contemplated shall have been begun. It being necessary to obtain an act of the Legislature, they solicit the passage of a law to that effect.

The committee have directed their chairman to bring in a bill in conformity to the prayer of the petitioners.

**No. 240.**

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**IN ASSEMBLY,**

**March 24, 1832.**

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**REPORT**

**Of the committee on the petition of Donald Fraser,  
for an extension of the lease for a ferry at Black  
Rock, in the county of Erie.**

**Mr. Mills, from the select committee, to whom was referred the  
petition of Donald Fraser & Co. for an extension of the act granting  
them the right and privilege of keeping a ferry across the Niagara  
river, at Black Rock, in the county of Erie,**

**REPORTED :**

**That an act was passed February 15th, 1826, authorising the  
court of common pleas of the county of Erie to lease to Lester  
Brace and Donald Fraser the ferry at Black Rock, for the term of  
five years, from the 1st day of May, 1826.**

**The petitioners represent, that in accordance with the provisions  
of that act they constructed a good and sufficient horse ferry boat, at  
an expense of more than \$1,000, which was destroyed by ice the last  
spring; that in consequence thereof, they have been obliged to  
build another, at an equal expense with the first; and in addition to  
the expense above stated, they have constructed a floating bridge,  
the cost of which was nearly \$800.**

**Your committee are of the opinion that the prayer of the petition-  
ers ought to be granted, and have instructed their chairman to bring  
in a bill extending the lease for the term of nine years.**

**[A. No. 240.]**



**No. 241.**

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**IN ASSEMBLY,**

**March 24, 1832.**

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**REPORT**

**Of the majority of the committee on the petition of John Lloyd, and others, praying for the passage of a law to appoint Commissioners for settling his accounts for erecting a poor-house in the county of Allegany.**

**Mr. Howell, from the majority of the select committee to whom was referred the petition of John Lloyd, and others, praying for the passage of a law for the appointment of Commissioners authorized to settle his accounts for building the county poor-house, in the county of Allegany,**

**REPORTED :**

**That on the 21st day of January, in the year 1831, the petitioner entered into a contract with the superintendents of the poor of the county of Allegany, to build a poor-house for the said county, for the sum of nineteen hundred and ninety dollars; that the house was to be constructed of stone, which at the time the contract was made, it was supposed could be got from a quarry upon the premises, upon which the building was to be erected, at a very small distance from the contemplated site; that the petitioner soon after ascertained, that the stone of which it was originally contemplated to build, were of such bad quality, that they were entirely unfit for the purpose, and the petitioner was compelled to procure stone from the distance of a mile, at a much greater expense than was estimated when the contract was made; that the expense in procuring materials was enhanced, not only by the distance, but the petitioner was**

put to great cost in opening the quarry at which they were produced, and removing large quantities of earth, before the stone could be obtained ; that the petitioner proceeded to perform the contract, and expended about four hundred dollars in procuring stone and other materials, when he ascertained that the building could not be completed for the sum stipulated by the contract. He then applied to the superintendents of the poor, with whom the contract was made, and offered to rescind the contract, and surrender to them all the materials he had procured, and labor done in pursuance of it ; that the county superintendents advised the petitioner to go on and complete the building, and assured him that he might rely upon the justice and liberality of the board of supervisors of the said county of Allegany, to make him a reasonable compensation for his labor ; that in reliance upon that assurance, the petitioner did complete the said poor-house, and expended in its erection three thousand two hundred and six dollars, exclusive of all compensation for his own services, for more than seven months ; that the said house is built in a good and substantial manner, with the greatest economy and frugality, and has cost less than any other building of the kind in the State, and that unless an extra allowance above the price stipulated in said contract, is given to the said petitioner, he will sustain a loss of twelve or thirteen hundred dollars by building the said house ; that at the meeting of the board of supervisors of the said county of Allegany, held in November last, upon a representation of the preceding facts, application was made to them to settle the accounts of the said petitioner, and allow him a reasonable compensation for the labor and expenses of building the said poor-house, but the said supervisors declined doing so, from an apprehension that they were not authorized by law to make such allowance.

To a majority of your committee, it appears reasonable that the petitioner should be allowed a fair and equitable compensation for the labor and expenses he has incurred for the public benefit.

The work has been executed with the greatest skill and economy, and if he had not erected it, the county must have incurred as great an expense in its construction, as the sum now asked by the petitioner for his indemnity.

A majority of your committee believe that the first principles of justice establish that the laborer is worthy of his hire, and forbid that the service and money of the petitioner should be taken for the public



benefit, without returning to him a just equivalent ; they are therefore of opinion, that the prayer of the petitioner ought to be granted, and have instructed their chairman to prepare and ask leave to bring in a bill accordingly.

E. HOWELL,  
*Chairman.*



**No. 242.**

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**IN ASSEMBLY,**

**March 24, 1832.**

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**REPORT**

**Of the committee on claims, on the petition of  
Daniel Hadcocks.**

Mr. J. Miller, from the committee on claims, to whom was referred the petition of Daniel Hadcocks,

**REPORTED:**

The petitioner therein sets forth, and by the affidavits of others it satisfactorily appears, that the petitioner, in the year 1800, to enable himself to obtain the means of supporting himself and a numerous family, became one of the earlier settlers of the then wilds, in the town of Cazenovia, in the county of Chenango, in the now town of Lenox, in the county of Madison, at the block settlement called Oak Hill, where, upon the reservation of the Indian lands, he made his residence, and considerable improvements, and where he procured, with the aid of his family, an ordinary subsistence.

In the year 1802, the State obtained a cession of land from the Oneida Indians of part of their reserve, upon which were the improvements of the petitioner. By an act of the Legislature, passed April 6th, 1803, the Surveyor-General was directed to cause said cession to be surveyed into lots and appraised, and a report thereof was by him to be made and filed in the office of the Secretary of State; and upon certain notices, by advertisement to be given, the Surveyor-General was directed to sell said lands at public vendue, to the highest bidder, &c.; but he was in no case to sell for a less sum than the value as appraised. Said act provided for the rights of those who were in possession of land in the cession aforesaid, who had made improvements thereon of the value of twenty-five dollars.

To such, upon application to the Commissioners of the Land-Office, and making satisfactory proof of such improvements, letters patent were to issue for such lot or lots for the sum at which such lots had been appraised and returned, upon such applicants paying one eighth part of the consideration money, and securing the residue of the payments pursuant to the directions of the act aforesaid. And it was also provided, that where said lands should be sold, and not to the occupant, and such occupant had an improvement of the value of twenty-five dollars, he should be entitled to receive the value thereof, and the manner of ascertaining the value was pointed out in that act.

The Commissioners of the Land-Office were by the same act required to issue letters patent for 100 acres, on the road called Clock's road, as it had been laid out by the Surveyor-General, to Sarah Dockstader, during her natural life, and to her heirs and assigns forever.

The petitioner represents that all of his improvements were upon said lot granted to Sarah Dockstader, and he produces numerous affidavits, all showing his improvements exceeded in value \$25, and some estimating them as high as \$300. He also says George Hasp had a small improvement upon one corner of said lot, and by the act aforesaid, it appears that the Commissioners of the Land-Office were required to grant to said Hasp lot No. 1 in said tract, on the same conditions as other lots were to be granted to other occupants, as before mentioned, because the lot upon which were his improvements had been secured to Sarah Dockstader. The petitioner further alleges, that he never received any allowance for his improvements made upon said lot whatsoever; that at the time of the passage of said act he did not apply for relief, because, firstly, he was wholly ignorant of any such act and the provisions thereof; and secondly, that he was afterwards so poor and destitute that he was utterly unable to search for his rights, and if discovered, incapable of urging his claims personally, and destitute of means to employ proper agents so to do. The petitioner has heretofore sought to obtain a cash allowance from the Treasury for his said improvements; report has been made in his favor, but his efforts have hitherto been unsuccessful.

He now asks, being old, unable to labor, and poor, to be allowed to purchase, when the same shall have been made ready for sale, a piece of the land which belongs to the State in the reservation afore-

said, at its appraised value, with a view of gain upon a re-sale, and it appears to the committee that if, through the aid of his friends, he could make the first payment, the land would be pledged for the residue, and hence there would be no danger of ultimate loss; and that the grant to the petitioner thus made, would only be to confer that which has long since been allowed as an act of justice to others under like circumstances.

The committee have therefore, in pursuance of the views expressed, directed a bill to be prepared, to present which, leave is now asked.



**No. 243.**

**IN ASSEMBLY,**

**March 3, 1832.**

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**REPORT**

**Of the select committee, on the resolutions of the  
board of supervisors of the county of Essex.**

**Mr. Vanderwarker, from the select committee to whom was referred sundry resolutions of the board of supervisors of the county of Essex,**

**REPORTED:**

**That they have had the same under consideration, and believe there ought to be a law passed at this session, for the levying of a tax on the taxable inhabitants of said county, to erect a fire-proof clerk's office. The clerk's office is now kept in a wooden building rented by the said county, in a part of which a family resides, not the family of the clerk. Therefore believing that the books, papers, &c. of said county, are in danger of being destroyed by fire, the committee ask leave to introduce a bill.**





**No. 244.**

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**IN ASSEMBLY,**

**March 26, 1832.**

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**MEMORIAL**

**Of the Medical Society of the city and county of  
New-York.**

*To the Honorable the Legislature of the State of New-York.*

**The memorial of the Medical Society of the city and county of  
New-York,**

**RESPECTFULLY SHEWETH:**

**That the Medical Society of New-York have noticed, with concern and surprise, that the comitia minora of the State Medical Society have presented a remonstrance to your honorable body, against an act relative to the practice of physic and surgery, introduced into the Assembly by Mr. Milledoler.**

**We would call the attention of the Legislature to the fact that the statement in the above mentioned remonstrance, that the medical profession at large, in this State, does not desire, and that the public weal does not demand such reformation as the act introduced contemplates, is predicated of the circumstance that at the late session of the State Medical Society, at Albany, a resolution was passed proposing that no alterations in the law regulating the practice of medicine and surgery were necessary. Now we are well assured that, at the time of passing this resolution, the members assembled in the State Medical Society knew that alterations in the law were called for, and contemplated, and they were not ignorant of the character of the alterations. But they also must have been able to perceive that these alterations would tend to open a fair field of competition among the learned and talented of the medical profession; and would tend to diminish the undue influences and pecuniary gains of present established medical schools, inasmuch as those conducting**

these institutions would be urged to make greater exertions for the advancement of science, and for acquiring celebrity, instead of depending, in a great measure, for eminence of character, upon the recommendation derived from State patronage; and they could hardly err in concluding that the students who might be well qualified for license to practice, and for the honors of the profession, would, generally, prefer the manly, open and public exhibition of their acquirements, which should be placed on record, (and which the act in question contemplates,) to a private examination, in which all the oblique influences of consanguinity, pupilage, the recommendation of powerful men, medical politics, and other possible causes of corruption, may have their full weight; and which examinations do not afford the people any further voucher for the qualifications of those recommended to them as physicians, than the mere words of the men who have examined them privately. And, at the time the above mentioned resolution was passed, in the State Medical Society, there was not present in that body a *just* representation of the medical men of this State; and it is understood that but a minority of the county societies had their delegates present: so that it is, thus, but a pretension, on the part of the comitia minora of the State Medical Society, in their remonstrance, to insinuate that the State Medical Society were ignorant of the nature of the contemplated alterations in the law; and it is not a fact, as appears to be insinuated in the above mentioned remonstrance, that the great body of the profession did not desire any alterations in the law. But the State Medical Society, by a vote of some of its members, did pass the resolution above alluded to; and because of this act, (as far as we can perceive, from the language of the remonstrance,) the comitia monora of the State Medical Society would impress your honorable body with the belief that the profession are opposed to the alterations proposed in the act introduced by Mr. Milledoler; and that, *therefore*, such alterations would be pernicious.

It appears to your memorialists that the "comitia minora" of the State Medical Society particularly object to the petition of the Medical Society of New-York, praying for alterations in law, on account of our having presented our petition to the Legislature without consulting the State Medical Society, and obtaining its approval of our prayer.

Your memorialists view the pretensions of the State Medical Society in this respect, as dangerous to the public weal, and destruc-

tive, if countenanced, to the advancement of science, and the real interests of the medical profession; for, it being evident from the remonstrance itself, that the government of the State Medical Society are partial towards the privileged medical institutions, and their present methods of education, and are desirous of hindering any competition with them, and are not only warmly engaged in securing to them their present State patronage, but are solicitous to obtain for them new and more extensive endowments; that, therefore, all applications to or through the State Medical Society, however salutary their objects may be, will, it is justly presumed, be rejected and disapproved of by that body, if such applications jar with the influence, views, and gains of those whom the State Medical Society seem so warmly engaged in patronizing.

The "comitia minora" of the State Medical Society object to the petition of the Medical Society of New-York, because it was not seconded by the other county societies. In respect to this, your memorialists beg leave respectfully to state, that they fear it to be the intention of the State Medical Society to establish as a principle, that the Legislature ought not attend to propositions in respect to the laws relating to medical subjects which have not been sanctioned by the State Medical Society.

Your honorable body will easily perceive that if this principle be admitted, no improvements will ever take place in respect to medical education, excepting such as may promote that policy which the State Medical Society seem to point out, in their remonstrance to your honorable body, which is, implicit reliance upon the perfection of their exertions for the public weal; full faith that the professors of the colleges do all that can and may be done in the promotion of science, in the instruction of students, in their examination and recommendations; that State patronage ought to be further extended to the medical colleges; that their endowments ought to be increased, &c. We can hardly hope that the policy of the State Medical Society will ever be altered, inasmuch as the influences of the colleges, and their more warm adherents, together with the peculiar organization of the State Medical Society, will procure a majority of the friends of the privileged institutions a voice at the sessions of the State Medical Society; and thus, that its "comitia minora" will always be interested as above mentioned, in support of the incorporated schools, and opposed to every thing else which may be brought before them.

The attempt of the "comitia minora" of the State Medical Society, in their remonstrance, to impress the belief that the form of examination, contemplated in the act before your honorable body, is of no utility ; that the record is a document of no value, or a mere curiosity ; that the whole examination is impracticable, and that it is calculated to facilitate collusion between the censors and the candidates ; as also the attempt to ridicule this form of examination, by referring to the term "grinding," &c., is, in the opinion of your memorialists, entirely unwarranted. The public and recorded examination has, for some time past, been instituted in the Medical Society of New-York, and several candidates have been passed at it. Its practicability is thus established by experience among ourselves. Its utility consists, principally, in checking the above mentioned corrupting influences ; in affording the people testimony that those recommended to them as deserving of their confidence in respect to the treatment of diseases, often involving health and life itself, have been publicly and rigorously examined in all the branches of medical science, a knowledge of which is deemed indispensably necessary for the physician to possess, in stimulating the student to prepare himself for the occasion, and making him depend solely upon his acquirements for a license to practice. The record exhibits the whole examination, and is, consequently, a good voucher for the qualifications of the candidate, as far as these can be ascertained by the censors, or by any other means. Now, is it to be supposed that such an examination is calculated to facilitate corrupt collusions ?— Does an attempt to blame it, or to ridicule it, come with any grace from those who are the avowed advocates of the private form of examination ? Is it not unfair on the part of the "comitia minora" of the State Medical Society, to try to bring it into ridicule ? But all this on the part of the said comitia, is but parallel to their effort in their remonstrance, to impress your honorable body with the belief that free competition, which they fear will take place if Mr. Milledoler's bill goes into effect, will be detrimental to the advancement of sound knowledge.

Your memorialists would represent to your honorable body, that the attempt of the "comitia minora" of the State Society, to make the county society of New-York appear incapable of appointing censors ; the insinuation that the young and unemployed have the ascendancy in our society ; that the more active and managing of these will always become censors ; and the aspersion that the censors of the New-York Medical Society are usually inexperienced ,

and unlearned, and unfit for their offices, must all have originated in bad feelings towards our society, and are, to say the least of them, unwarranted.

Your memorialists differ widely from the views of the *comitia minora* of the State Medical Society, in respect to the effects of the bill before your honorable body, should it become a law. Many other counties of our State have not the means of supporting medical schools which our county possesses. But should several schools, in time, be established, it appears to us that the cause of science would, thereby, be advanced. The competition, thereby excited, would still be productive of greater endeavor to excel in teaching, and to promulgate sound knowledge. It is indeed true! as the *comitia minora* of the State Medical Society states, "that doctrines would vary according to the capacity of teachers;" this is at present the case; but it may hardly be admissible that, therefore, the present knowledge of the nature and treatment of diseases would be impaired, or the acquisition of further knowledge hindered; on the contrary, we think that, by a free competition among the learned of the profession, by affording a fair field for the display of talent and knowledge, we might justly hope for the advancement of medical science, and of the public interest as far it is connected with medicine.

In the humble opinion of your memorialists the attempt of the "*comitia minora*" of the State Medical Society, to alarm the State about "the violation of the grave, and the disturbance of the dead," in the villages of the State; and the prospect of that "*comitia minora*" that "every village would have its petty medical school," are visionary, or, perhaps intended to influence those who may place much confidence in the predictions of the men who presented the remonstrance. Finally, your memorialists beg leave to assure your honorable body that they view the alterations in the medical law, contemplated in the act introduced into the Assembly by Mr. Milledoler, as calculated to advance medical science in this State, and to correct many existing evils.

DANIEL L. M. PEIXOTTO, M. D. *President.*

FRANCIS W. WALSH, M. D. *Secretary.*



**No. 245.**

**IN ASSEMBLY,**

**March 26, 1832.**

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**REPORT**

**Of the committee on the erection and division of towns and counties.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the county of Putnam, praying for a law directing the Surveyor-General to survey and establish the north boundary line of said county,**

**REPORTED :**

**That doubts and uncertainty exist as to the true course of the northerly boundary line of the county of Putnam, which divides it from the county of Dutchess.**

**Your committee have examined the records of the Surveyor-General's office, and find that the northerly boundary line of said county is described as along the north bounds of the lands granted to Adolph Philipse to the east bounds of the State.**

**Your committee find from the records of the Surveyor-General's office, also, that Adolph Philipse's grant was granted to him the 17th of June, 1697, and it is represented to your committee that the land marks and monuments are obliterated so much that a diversity of opinion exists where the true line is.**

**Your committee are unanimous in the opinion that the prayer of the petitioners ought to be granted, and have instructed their chairman to ask leave to introduce a bill.**





**IN ASSEMBLY,**

**March 26, 1832.**

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**REMONSTRANCE**

**Of seventy-six practitioners of medicine in the city of New-York, against the bill introduced by Mr. Milledoler.**

*To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened.*

The undersigned, members of the medical profession in the city of New-York, respectfully represent, that a bill has recently been brought before your honorable body, the object of which is to make sundry important alterations in the existing law of the State, in relation to the granting of medical licenses and degrees, and fearing, from representations which have been made, that the Legislature may have received an impression that said alterations meet with the unanimous concurrence and approbation of the profession in this city, they deem it a duty which they owe to themselves, as well as to the profession, to state that such is not the fact. A very large proportion of the profession have not even been consulted in relation to the proposed changes, and the undersigned are decidedly opposed to them.

Having been already anticipated by the State Medical Society in their able remonstrance, which has been presented to your honorable body, they deem it unnecessary to enter into any detail of facts and arguments on the subject. They cannot, however, refrain from stating, that the powers proposed to be vested in the County Medical Society of New-York, so far as a board of examiners and the mode of conducting their examinations are concerned, are already possessed and exercised by that body.

They have a board of censors appointed annually by themselves, and they now conduct their examinations in public. In these matters, therefore, any legislative interference would seem to be wholly unnecessary, unless some ulterior objects are to be gained, not expressed in the bill.

The undersigned would, therefore, respectfully request your honorable body not to make any changes in the law, until, at least, the sense of the profession throughout the State in relation to them, may be fairly and fully obtained.

Ja. C. Bliss,  
Peter C. Tappen,  
Alfred C. Post,  
Henry Mott,  
Jared Linsley,  
James I. Brownlee,  
R. Graves,  
Rich'd K. Hoffman,  
John S. Conger,  
M. W. Williams,  
John Davis,  
Lewis Hallock,  
Marinus Willett,  
Stephen Hasbrouck,  
Nicol H. Dering,  
Samuel R. Childs,  
Isaac H. Merkel,  
Wm. Stillwell,  
Jam. L. Phelps,  
John R. B. Rodgers,  
John B. Beck,  
J. Kearney Rodgers,  
Edw'd Delafield,  
C. P. Heermans,  
James R. Manley,  
J. Aug. Smith,  
Lynde C. Ferris,  
F. U. Johnson,  
Eneas S. Condit,  
T. W. Powers,  
Eben'r Storer,

Dan. W. Kissam, jr.  
J. D. Jaques,  
Rich'd L. Morris,  
John B. McEwen,  
Alex. W. Stevens,  
Sam. W. Moore,  
Benj. McVickar,  
James D. Fitch,  
Wm. E. Stillwell,  
William W. Miner,  
Wm. Baldwin,  
E. R. Belcher,  
Hiram Upson,  
Ja's Cockcroft,  
A. L. White,  
Hersey Baylies,  
P. Van Andale,  
R. M. Bolles,  
John Miller,  
Gilbert Smith,  
John C. Cheesman,  
Benj. B. Coit,  
Edward G. Ludlow,  
Albert Smith,  
M. Stephenson,  
Sidney S. Franklin,  
Wm. Wilson,  
A. W. Ives,  
Thomas Cock,  
Reuber P. Tanner,  
Joseph M. Smith,

**Martyn Paine,  
Wm. P. Buel,  
Jas. T. Cromwell,  
Alfred S. Purdy,  
C. O. Livingston,  
C. R. Gilman,  
Jas. A. M. Gardner,**

**Wm. H. Hobart,  
John C. Jay,  
Stephen R. Harris,  
Edw'd T. Hitchcock,  
Horton Bethune,  
C. R. Bogert,**



**No. 247.**

**IN ASSEMBLY,**

**March 26, 1832.**

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**ANNUAL REPORT**

**Of the Bank of Savings for Seamen, of the city of  
New-York.**

The trustees of the Bank of Savings for Seamen in conformity  
with the requisitions of the law,

**REPORT:**

That there has been received at the bank during the year, ending  
the 31st December, 1831, from 494 depositors,..... \$84,896 49

Of these 180 are new accounts, and 314 are re-deposits.

The amount of interest received by the bank during

the same period, has been..... 2,638 30

Which, together with the balance in the treasurer's

hands at the close of the last year, of..... 3,326 31

Making the total amount to be accounted for, for the  
past twelve months, (there having been no sales of  
their stock previously invested,).....

\$90,860 10

Of this amount there has been paid to depositors \$51,472 00

For investments in stock of the city of New-York,

\$ 1,204 50

State of Ohio,..... 10,783 44

United States, ..... 6,100 00

18,087 94

And for expenses incident to the conducting the esta-  
blishment,..... 358 24

Leaving a balance not permanently invested on the

4th of January, 1832, of..... 20,941 92

\$90,860 10

The trustees have further the satisfaction to report, that since the closing of the accounts on the date above mentioned, the board have been enabled to divide an interest at the rate of 5 per cent per annum, to such of the depositors as may have been entitled to it by the rules of the bank.

The stocks at present held by the bank, including all investments, are as follows :

Ohio, 6 per cents, .....	\$16,764 69	
“ 5 “ .....	10,212 62	
	<hr/>	\$26,977 31
Corporation 5 per cents, city of New-York, .....		6,718 25
New-York State, 4½ .....		11,579 20
United States, 4½ .....		6,100 00
		<hr/>
The total amount of these stocks being, .....		<u>\$51,374 76</u>

Since the opening of the bank in May, 1829, say for a period of 2½ years, the whole number of deposits, has been 962, from which the amount received, is, .....	\$147,615 94
Interest received, .....	4,340 68
	<hr/>
	\$151,956 62

Repaid to 554 drafts, .....	\$78,658 99
Expenses, .....	986 95
Stocks held, .....	51,374 76
Cash on hand, .....	20,941 92
	<hr/>
	<u>\$151,956 62</u>

The foregoing statements afford strong grounds to believe that the seamen of the United States will become every year more and more convinced of the usefulness of the object which the friends of the institution are endeavoring to promote.

N. TAYLOR, *President.*

O. H. HICKS, *Secretary.*

**No. 248.**

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**IN ASSEMBLY,**

**March 26, 1832.**

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**REPORT**

**Of the Comptroller, in obedience to a resolution of  
the Assembly of the 19th instant.**

**COMPTROLLER'S OFFICE, }  
Albany, 26 March, 1832. }**

**The Hon. CHARLES L. LIVINGSTON,  
Speaker of the Assembly.**

**SIR—**

**Herewith is transmitted a report, made in obedience to a  
resolution of the honorable the Assembly, of the 19th instant.**

**I have the honor to be,**

**With great respect,**

**Your obedient servant,**

**SILAS WRIGHT, Jr.**





# REPORT, &c.

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STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

The Comptroller, in obedience to a resolution of the honorable the Assembly, in the words following:

"STATE OF NEW-YORK, }  
In Assembly, March 19, 1832. }

*"Resolved,* That the Comptroller report to this House the total amount of the Bank fund. What portion thereof has been invested, and in what securities: and in what bank the balance of said fund is deposited, and at what rate of interest; and particularly to state, whether any, and if any, what part of said fund has been expended for the ordinary expenses of government.

"By order,

"FR. SEGER, *Clerk.*"

## RESPECTFULLY REPORTS:

That the precise situation of the Bank fund, the whole amount of receipts of capital and income, and the whole amount of payments, and the causes for each, up to the 30th September last, is exhibited in his annual report, made to the Legislature on the 4th day of January last, (see Assembly documents of the present session, No. 4, pages 21 and 22, head "Bank Fund.") The remarks there found will also show the efforts which had been made to invest the capital moneys of this fund, the amount and rate of investment made, and the reasons for the failure to invest the balance remaining in the treasury, at the time when the accounts closed which are exhibited in that report.

Document No. 23, of the Senate documents of the present session, exhibits the amount paid to the capital of this fund for 1831-2, up to the 27th January last, the date of that report. That document shows that all the banks, liable to contribute to the fund, had then paid the contribution due on the first day of the present year, with

three exceptions, to wit : the Farmers' Bank of Troy, with a capital of \$278,000; the Merchants' and Mechanics' Bank of Troy, with a capital of \$300,000, and Mechanics' and Traders' Bank of New-York, with a capital of \$200,000. The amount paid at the date of that report, as shown, was as follows :

Total payments in 1830-1,.....	\$26,983 67
Payments then made in 1831-2, .....	58,999 70
Paid since that time, Farmers' Bank of Troy,.....	1,390 00
Merchants' and Mechanics' Bank of Troy,.....	1,500 00
Mechanics' and Traders' Bank of New-York, 269 days,.....	736 98

Showing the whole payments to this date for account of the capital of the fund to be,.....	\$89,610 35
Deduct payment for \$8,082.40—5 per cent stock, of 1837, at 6 per cent premium..	\$8,567 34
Payments for salaries of Commissioners, prior to 30th September last,.....	\$6,398 99
Payments of salaries of Commissioners, due 1st Oct. 1831, and 1st Jan'y, 1832, \$2,250, less the amount of income re- ceived upon the stock invested \$303.09, being .....	1,946 91
	<hr/> 16,913 24

And there will remain in the treasury at this date the sum of .....	<u>\$72,697 11</u>
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This amount, exclusive of the sum which will be required to pay the salaries of the Commissioners for the present year, remains to be invested.

The amount already invested, and the rate of that investment, is shown by both the documents above referred to, and to those documents the Comptroller respectfully asks leave again to refer, not only for the facts inquired after, but for his views in relation to the prospect of investing this fund, and the provisions he thinks necessary, in addition to the existing law, to enable him to preserve the capital of the fund entire, in the course of investing it as now authorised.

The payments to this fund are required, by the second section of the act creating the fund, to be made into the treasury of the State. The only power given to the Comptroller to draw these moneys out of the treasury, is to be found in the sixth section of the act conferring the power of investment, or in the 26th section of the act, directing the payment of the salaries of the Commissioners. So much of the fund, therefore, as has not been drawn out of the treasury pursuant to one of these sections of the act, still remains in the treasury, and is deposited with the other treasury receipts.

The seventh section of title four, chapter eight, of the first part of the Revised Statutes, is in the following words :

“§ 7. The Treasurer shall deposit all monies that shall come to his hands, on account of this State, *except such as belong to the Canal fund*, within three days after receiving the same, in such bank or banks, in the city of Albany, as, in the opinion of the Comptroller and Treasurer, shall be secure, and pay the highest rate of interest to the State for such deposit.”

Pursuant to this direction of the law, the treasury deposits were, by a circular addressed to each of the banks in this city, offered to the bank which should propose to give the highest rate of interest for the term of one year. The law was passed, and took effect on the first of January, 1828; the first offer of these deposits was made soon after, and the Commercial bank made the highest proposition, and took the deposits at  $3\frac{1}{2}$  per cent. At the close of that year, proposals were again issued, and the only offer received was from that bank, to give three per cent. The same course was again repeated, with the same effect, in 1830; since which time new proposals have not been issued, and the deposit remains with that bank, at 3 per cent.

Under that arrangement, so much of the bank fund as is not invested, or has not been paid out in the salaries of the Commissioners, remains deposited with the other moneys paid into the treasury, as, by the law above referred to, the Treasurer is compelled to deposit it.

It is impossible for the Comptroller to answer the inquiry whether any, and how much of the moneys of this fund have been expended for the ordinary expenses of the government.” The moneys belonging to all the funds of the State are paid into the treasu-

ry without any designation as it regards the money. The accounts kept in this and the Treasurer's office, show what portion of the money so paid belongs to each fund, but all the payments are deposited promiscuously, and the treasury is held responsible to all the special funds for the respective amounts received from each, whenever calls on account of the particular fund shall be made. In this way the bank fund moneys have been paid into the treasury and deposited; and there has probably been, at all times, since the first of January last, in bank, to the credit of the Treasurer, more money than the whole amount due to this fund. Still as will be seen by the last annual report of the Comptroller, before referred to, there are considerable sums due from the treasury to the literature and school funds, and payments of interest and principle for account of those funds are constantly making. There is not now in the treasury, nor has there at any time been within the period mentioned, money in the treasury to pay off the amounts due to all these funds, and consequently the money belonging to some one of them must have been paid out in discharging the ordinary expenses of the government.

It is found upon inquiry at the treasury, that there is now remaining in deposit to the credit of the Treasurer, in the Commercial bank, of Albany, .....	\$76,378 71
And in the Manhattan bank, of New-York,.....	16,149 87
Making the whole amount now in the treasury,.....	<u>\$92,528 58</u>

The amount in the former bank is drawing an interest at the rate of 3 per cent payable half yearly, and that in the latter bank pays no interest at all. It has not been customary to suffer any amount of money to remain in the Manhattan bank for this reason, but during the last summer a considerable amount was put there, and some considerable sum has been continued there, for the purpose of the purchase of stocks as an investment of the bank fund. The money there deposited ought therefore to be considered as belonging to the bank fund, and if so much of the money in the Commercial bank, as shall, with that, make up the amount of that fund now in the treasury, be considered as the money of the bank fund, then none of that money has been paid "for the ordinary expenses of government;" but if the money in the Commercial bank be considered as belonging to the literature fund or to the school fund, then the moneys of bank fund have "been expended for the ordinary expenses of government."

It is not seen, however, that the interests of the fund can be at all affected by any denomination of the money which now is or which has been in the treasury. It is enough that the treasury will be prepared to repay to the bank fund the money which has been paid into it, belonging to that fund, whenever a legal call shall be made.—While that money is in the treasury, as the law now stands, it is immaterial to the fund to which it belongs, what disposition is made of it; as no such disposition can be an investment so as to entitle the particular fund to any interest which may be obtained upon it. Thus the bank fund can only be invested in “the public stocks of this State, of the United States, or of the cities of New-York and Albany,” and such investment cannot be made without withdrawing the money from the treasury to pay for the stocks. While the money is in the treasury, therefore, by the existing laws, the deposit is a matter which interests the treasury only, and not the particular fund for the account of which the payment into the treasury may have been made.

All which is respectfully submitted.

SILAS WRIGHT, JR.

*Dated Albany, 26th March, 1832.*



**No. 249.**

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**IN ASSEMBLY,**

**January 31, 1832.**

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**MEMORIAL**

**Of the Medical Society of the city and county of New-York, praying for an alteration of the Revised Statutes, regulating medical education in this State.**

*To the Honorable the Legislature of the State of New-York.*

The Medical Society of the city and county of New-York, present this memorial.

Whereas it is designed by the laws regulating the practice of physic and surgery in this State to prevent unqualified persons from exercising the healing art, and only to license such as by their knowledge and other qualifications are worthy to be entrusted with the health of the public, and who are deserving of their confidence and good feelings :

And whereas it is a lamentable fact, that under the existing regulations there are persons practising physic and surgery who have not applied themselves to the indispensably necessary studies, and are quite ignorant of the profession, and who prescribe very dangerous and deleterious articles, and that there are also many who are authorised to practise medicine, and who, from ignorance, endanger the health and lives of the community :

And whereas it is impossible for persons out of the profession to discriminate between those who are competent and those who are unqualified to practise, and thus no individual is secure from the immorality and ignorance of impostors :

And whereas the present mode of examination for licenses and degrees does not afford the people any good voucher that justice

[A. No. 249.]

has been done to them, in the recommending of men to whom they are to entrust their health and lives, nor does it afford any check to favoritism, the influences of consanguinity and pupilage, the recommendations of powerful men, the neglect of duty, and personal animosities, these examinations being conducted in private, and often by interested individuals, whose word alone must be taken as evidence of the qualifications of the candidates :

And whereas the Medical Society are deeply impressed with the necessity of such alterations in the law regulating the practice of physic and surgery as shall remove the evils above enumerated, and as shall realize the objects for which examinations are instituted, viz: the security of the public, the encouragement of science, and by impartial trials of the candidates to recommend those only who have faithfully prepared themselves for their important calling, to the confidence and respect of their fellow citizens :

Therefore, your memorialists respectfully advise and urge that a law be enacted, by which,

1. All examinations for obtaining licenses and degrees for practising physic and surgery shall be held in public, and the questions and answers recorded verbatim :

2. All examinations for licenses to be conducted by four boards of examiners, to consist of fourteen members each, to hold their office for ———— ;

3. These boards to be appointed by the county medical societies, each board to be formed from two senatorial districts ; each county society to be entitled to elect at least one member, so that every county may be represented, and as nearly as possible in the ratio of its representation in the State Legislature. The boards to hold their sessions in New-York, Albany, Utica and Buffalo, semi-annually, and when in session to be empowered to appoint a president, a secretary and a treasurer :

4. The term of study for license to be the same as required for degrees in the incorporated colleges of this State :

5. Persons coming from other states or countries not to be permitted to practise or teach physic and surgery in this State, until they shall have given satisfactory evidence of the required time of study, and shall have passed the public and recorded examination here :



6. Every candidate, on presenting himself for examination, shall furnish the board of examiners with an essay on some subject connected with medicine or surgery :

7. The candidates to be examined on subjects, the knowledge of which is indispensably necessary to the practitioner, viz : anatomy and physiology, theoretical, practical and forensic medicine, medical and operative surgery, midwifery, materia medica, pharmacy, chemistry and botany :

8. The fees for examination to be paid to the treasurer of the board examining :

9. The Regents of the University to furnish the diplomas upon the recommendation of the board of examination :

10. The State Medical Society in session to constitute a board of supervision and appeal on complaints of grievances brought up from or against the board of examiners ; all appeals to be made on certified transcripts of the records of examination.

Your memorialists beg leave to observe, that public and recorded examinations are required in other countries, and that this medical society have adopted this form of examination. They are convinced of its utility in checking abuses, in stimulating the students to diligence by the publicity of the examinations, and by the perpetual evidence of their qualifications which the record affords.

Your memorialists hope and trust that the honorable the Legislature will take this subject into consideration, and in its wisdom enact such regulations as will advance the public weal. And as in duty bound, your memorialists will ever pray.

DANIEL L. M. PIEXOTTO, M. D.,  
*President.*

FRANCIS W. WALSH, M. D. *Secretary.*



No. 250.

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**IN ASSEMBLY,**

March 12, 1832.

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**MEMORIAL**

**Of J. A. Smith and others, of the Medical Profession in the City of New-York, against any change in the present law relating to the conferring of degrees and the regulation of the practice of Medicine in this State.**

*To the Honorable the Legislature of the State of New-York,  
in Senate and Assembly represented.*

The undersigned respectfully represent, that a bill has recently been reported to your Hon. body, the object of which is to direct the Regents of the University to confer the degree of doctor in medicine upon all such as may be recommended by a board of examiners, to be appointed by the medical society of the city and county of New-York. Considering the proposed bill, if passed, fraught with the most injurious consequences, the undersigned would beg leave to enter against it, their respectful protest. By the existing regulations of the State, in relation to the medical profession, a very just distinction has hitherto been made between the license to practice physic and surgery, and the diploma of the doctor in medicine: the former being given without any attendance on lectures; the latter being reserved as the reward of those who have subjected themselves to the labor and expense of attending regular courses of instruction at some medical college. Such a distinction is not only just in itself, but is evidently attended by consequences the most advantageous: For while the practice of the profession is thrown freely open to every one who chooses to enter it by obtaining a license, the higher honor of a diploma holds out a constant incentive to further and more extended studies. Accordingly, nothing is more common than for young members of the profession to take license in

the first instance, and then by enlarging their attainments, to obtain from the Regents, the diploma of doctor in medicine. But should the proposed law pass, nothing of the kind can in future happen; and why, the undersigned would respectfully ask, should the projected change be effected? Is it pretended that the medical schools of the State are ill conducted? that they fail in the objects for which they are designed? or is the hope even held out, that under a new order of things, better practitioners of the healing art would be formed? Nothing of the kind is alleged. Why then is your Hon. body called upon to change a law which was adopted after grave consideration, which has been found eminently beneficial, and which is approved of by nineteen-twentieths of those upon whom it bears, and who are the best judges of its effects? What is the object proposed by the bill? It is simply to enable certain young aspirants to burst the bonds by which they conceive themselves at present bound, and emerge into full-blown professors. Yet any one is at liberty to give lectures. Several did so during the last winter, and will probably do so during the next. To this there neither is, nor can be any objection. But the undersigned do hope, that in New-York, as in every other civilized community in the world, the highest literary and professional honors which a State can confer, will be reserved for those whose academic education warrants the distinction.

J. AUG. SMITH, M. D.

*President and Professor of Anatomy and Physiology.*

ALEX. H. STEVENS, M. D.

*Professor of Surgery.*

JOSEPH M. SMITH, M. D.

*Professor of the Theory and Practice of Physic and  
Clenical Medicine.*

JOHN TORREY, M. D.

*Professor of Chemistry and Botany.*

JOHN B. BECK, M. D.

*Professor of Materia Medica and Medical  
Jurisprudence.*

VALENTINE MOTT, M. D.

*Professor of Operative Surgery with Surgical and  
Pathological Anatomy.*

EDWARD DELAFIELD, M. D.

*Professor of Obstetrics and diseases of women and  
children.*

**No. 251.**

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**IN ASSEMBLY,**

**March 27, 1832.**

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**REPORT**

**Of Mr. Winfield, from the committee on medical societies and colleges.**

Mr. Winfield, from the committee on medical societies and colleges, presents the following

**REPORT :**

Having duly examined the report and bill submitted to this House by the chairman of the medical committee, and finding that some of the principles contained therein are inconsistent with the interests and high character of our profession, I beg the indulgence of the House while I present to them my views in the following report. The task thus imposed has been urged on me more from necessity than inclination. If ordinary causes had been sufficient to restrain me, they were here, I confess, presented in "bold relief." The reproach, that "doctors always disagree;" the respect which I entertain for the honorable chairman of the medical committee, and for his feelings; and the repugnance which I always feel to the presentation of myself before the public as a writer, were all sufficient reasons, under ordinary circumstances, to paralyze every incentive; but under existing circumstances, I was impelled by considerations and motives paramount to these. They were no less than the highest regard to the welfare of mankind, to the preservation of some of the most noble and useful institutions of our common country, and to the honor and respectability of our profession.

I should have been prepared to communicate my sentiments on this subject when the first report was presented to this House, had

that report been submitted to the examination of the committee before it was offered; and that it should have been submitted, is a courtesy, I am informed, which parliamentary custom has ever countenanced and sanctioned, but which has from some cause been neglected in this case. I offer this not only as an apology for the procrastination of this report, but I offer it further, as an argument that the report ought not to have been presented under the circumstances that then existed; and if I can understand the language of two of the committee with whom I have since conversed, it is safely implied that it ought not to have been presented at all in its present character, and especially, as the report of the majority of that committee.

I would observe before I commence my arguments, on the exceptionable parts of this report and bill before you, that I accord in opinion with the honorable chairman of the medical committee in relation to the law legalizing quackery. The law as it now stands secures to the quack the privilege of committing the most fatal blunders, as long as he commits them through the agency of botanic medicine, and without detection; and not only does the statute secretly connive at the errors thus committed by the quack, but it places him in a position by which he is enabled to extract from the sufferer a payment for his blunders. Our Legislature, would, therefore, in all probability, be promoting the interests of our profession, and the welfare of society in general, in expunging that law from our statute books.

The first exceptionable feature in the character of the report and bill before you, which I shall notice, is the recommendation of a provision, by statute, which shall make it necessary for every physician who may locate himself in this State, from a foreign country, or from any other State in the United States, however good his credentials, to subject himself again to an examination, either before these examiners to be appointed under this novel state of things, or the faculty of one of the incorporated colleges of this State. This requirement is calculated to cast a reproach, not only on the medical colleges of Europe, but equally on those of our sister States; and is, therefore, incompatible with liberal and enlightened policy and a friendly intercourse with our own States, as well as with the nations of Europe. Besides this, as it seems to be a great object of the report to set guards against a growing monopoly, and to establish the profession on principles of pure democracy, I think in this case,

the end would be defeated; and hence it follows that a solecism is produced between the proposition and the argument. And I would here observe that, although the result happens to be correct, in the case which I shall now notice, the same logical anamoly is presented between the general proposition, in regard to monopolies, and the recommendation of a law to expunge the section legalizing quackery; for, if the general proposition is correct, that the arena must be open for every competitor, then most assuredly it is wrong to restrain any person from practising physic and surgery; on his own merits he should stand or fall.

The most exceptionable part of this report and bill yet remain to be considered. I refer to that part which recommends the passage of a law authorising the Medical Society of the city and county of New-York to appoint a board of examiners, to examine candidates for the degree of Doctor of Medicine; thus converting the whole society, at once, into a Medical College. That a local Medical Society should ask for such prerogatives is a chimera unheard of before, in any State or country. To shew the fallacy of this request permit me to try it by the monopolizing test of the report. There are, I think, fifty-five counties in this State, the most of which contain physicians who would compete with the most talented members of the Medical Society of New-York, either as practitioners or professors; if, then, it be an important object for the faculty of the city and county of New-York to obtain such a law, and if granting favors to a few and investing them with exclusive powers constitutes a monopoly, then, if the chairman of the medical committee does not ask for a law, against which he proposes, in his report, to be so desirous of guarding, I confess I do not understand logic.

We will next try this medical enterprize by another test proposed in the report; the rule of competition. The Medical Society, of the city and county of New-York, seem to think that some of their young men would make equally as good professors as those gentlemen who are now professors in the Medical Colleges of this State; and being ambitious of fame and glory, ask of you the law proposed by the bill before you, and which is no secret I believe, they prospectively contemplate the organization of medical schools on the basis of this privilege. The physicians in all the other counties, being equally ambitious of professional honors, may apply also for similar privileges. What would be the result? Fifty-five colleges would soon be organized: then carry out this levelling doctrine still a little

further, and every physician might not only be a professor, but every man might be his own doctor. That anarchy and confusion would follow, is a deduction so irresistible that any further illustration is unnecessary. So much for collision between propositions and results. We have thus proved, I think, that the law asked for can not be sustained by arguments fairly deduced from the propositions contained in the report. We will now present a few facts to the consideration of this House, to prove further the fallacy of the conclusions of the chairman of the medical committee. And first, permit me to observe, that I am friendly to a fair competition in all professions and all kinds of business. Not such a competition, however, as shall be excited by the destruction and annihilation of all our present incorporations and institutions, but such an one as shall bring into the field, when required by the wants of community, other incorporations. If, then, this proposition is correct, and the necessities of New-York required another medical institution, the petitioners should have prayed for one similar to those which already existed, and not for a law to open the arena to all the members of the Medical Society of New-York, which consists of two hundred and seventy-one medical gentlemen. In this case division and confusion would not only follow among themselves, but the destruction and loss of all our incorporated institutions also.

That the bill proposed is not required by the faculty of the State of New-York, and consequently that it is not considered necessary to a fair competition, I will in the next place demonstrate satisfactorily, I think.

The medical society of the State of New-York, at a meeting held at this place during the present session of the Legislature, on the information which they received that a change in the law was contemplated, resolved by a vote, which, with one exception, was unanimous, "that they deemed any alteration in the laws regulating the practice of physic and surgery inexpedient at this time." A copy of this resolution, signed by the secretary, and sealed with the seal of the society, accompanies this report.

In the next place, I would observe, that from all the county medical societies of this State, there is not a solitary petition praying for this formidable innovation, except from New-York; and to the gentlemen composing these societies, thus scattered over every part of this "empire State," will be awarded by every candid man, the



merit of being at least, as well qualified to form opinions in relation to the necessities of the profession, as the few petitioners from the city of New-York.

It appears from the memorials and remonstrances presented to this House on the subject of this bill, that even the faculty of the city and county of New-York are divided ; that seventy physicians, besides the faculty associated with the medical institution of this place, have remonstrated against the bill, and a communication has been received that a list containing the names of thirty physicians more is now on the way ; it will hence be obvious, that whatever may be the feelings of these gentlemen, on the necessity of a regular constituted college, they think the present bill an innovation on the rights and privileges of the medical faculty, and that more evil than happy effects must result from it.

I am not called on in this discussion to give an opinion on the necessity of organizing an additional college with the same powers and privileges that has been granted to the other medical seminaries, or I would fearlessly, as in the present case, give an opinion ; but I would here remark, that there is even a difference of opinion on this subject, as has been proved in the refusal of the Legislature heretofore to incorporate such an institution. They, of course, must have come to the conclusion that two colleges in this State, and twenty-one in the United States, must open the arena sufficiently to competition.

If this conclusion was correct in regard to an additional college, then the prayer to give professorships to two hundred and seventy-one physicians in the city and county of New-York must be, as I have already pronounced it, chimerical.

Of our professors attached to the two colleges of this State, and of their fidelity and talents, I have thus far refrained from saying a word, knowing that the idea has been industriously disseminated, that the opponents of this bill were acting under their influence ; but taking into consideration the flourishing condition of our medical schools, and the profession in this State, we must be constrained to point to them and say with pride as well as pleasure, " these are our jewels."

I have thus honestly, and "with a single eye" to the interests of my profession, discharged a painful duty ; and I do not fear that

any man will say to me that I have been actuated from other motives than those of predilections in favor of, and justice to my profession. I ask therefore, no favors from any of the professors or institutions of my country, which, as a citizen, I am not entitled to, neither do I fear any indignation that my course may excite.

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*Resolution adopted at a meeting of the Medical Society of the State of New-York.*

ALBANY, March 6th, 1832.

At the meeting of the State Medical Society, in February last, the following resolution was adopted :

“ *Resolved*, That the State Medical Society deem any alteration in the laws regulating the practice of physic and surgery inexpedient at the present time.”

“JOEL A. WING, *Secretary*.”

**No. 252.**

**IN ASSEMBLY,**

**March 6, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on the petition of sundry inhabitants of the county of Washington.**

**Mr. Disbrow, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to which was referred the petition of inhabitants of Washington county, to abandon part of the northern turnpike road,**

**REPORTED :**

**Your committee have had the same under consideration ; and on examination, find that the company of said Northern Turnpike Road have not united with the petitioners for authority to abandon a part of their road, and have it declared a public highway ; and to grant the prayer of the petitioners, would be to alter the chartered rights of said company, and would require notice according to law ; and as notice has not been given, your committee have come to the conclusion that the prayer of the petitioners cannot be granted. They therefore recommend that the petitioners have leave to withdraw their petition.**



**IN ASSEMBLY,**

**March 6, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on the petition of sundry inhabitants of the counties of Washington, Essex and Clinton.**

Mr. Juliand, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to which was referred the petition of sundry inhabitants of the counties of Washington, Essex and Clinton, praying for legislative aid to open and improve a road from Whitehall, along the west side of Lake Champlain, to the forty-fifth degree of north latitude, or the north bounds of the county of Clinton,

**REPORTED :**

That the petitioners represent that great embarrassments have hitherto attended the intercourse by land between the cities of Montreal and Albany, in consequence of the bad state of the roads, and particularly that portion that is sought to be improved by the appropriation asked for. The general face of the country through which this road is to pass, is represented to be broken and rugged, and will not admit of an easy and commodious communication from north to south, except along the lake shore. The inhabitants in this region of country, not having the means within their control to open and improve the road in a suitable manner, ask for such an appropriation as may be deemed sufficient to accomplish the object which they have in view, and for the appointment of commissioners to lay out and cause the same to be opened.

The sum necessary to accomplish the object which the petitioners have in view, is not designated, but is believed not to be less than ten thousand dollars. It is not pretended that any lands belonging

to the State are to be benefited by this appropriation, nor is it contemplated that any return should be made to the treasury for the money expended.

The road is proposed to be located on the margin of a navigable lake, and consequently is not expected to be used for the transportation of the productions of the country, and will not materially contribute to the wealth or prosperity of the inhabitants of the surrounding region.

Such a road may be desirable for the transportation of the mail, and for the accommodation of the traveller who may be passing from Albany to Montreal at a season of the year when the lake navigation is closed ; but in the opinion of your committee, it does not present a case which would justify an appropriation from the treasury of the State.

Your committee therefore recommend the adoption of the following resolution :

*Resolved*, That the prayer of the petitioners ought not to be granted.

**No. 254.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**REPORT**

**Of the committee on canals, on the petition of Henry N. Van Patten.**

Mr. Howell, from the committee on canals and internal improvements, to whom was referred the petition of Henry N. Van Patten,

**REPORTED :**

That the petitioner alleges, that in the construction of the Erie canal, a well of water belonging to the petitioner was so injured by the filtration of the water of the canal into it, that the water of the well was rendered unfit for use; and by reason of an alteration in the public highway, made to afford room for the said canal, the said highway was laid over the said well, which was consequently filled up. That the Canal Appraisers, in estimating the damages sustained by the petitioner, allowed to him one hundred dollars on account of the said well; and assured him, that if the water in the said well did not become fit for use after a reasonable time, they would make him a further allowance, or procure good water for him.

Your committee have investigated the subject, and ascertained that the damages of the said petitioner, as well on account of the said well, as the other injuries occasioned by the construction of the said Erie canal, were fully and absolutely appraised and paid to the said petitioner; and that no promise or engagement to make him any further allowance on account of the said well, was ever made to him by the said Appraisers. The committee are therefore of opinion that the prayer of the said petitioner ought not to be granted, and they beg leave to recommend the adoption of the following resolution :

**Resolved,** That the prayer of the petitioner ought not to be granted.

[A. No. 254.]





**No. 255.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**ANNUAL REPORT**

**Of the Trustees of the Bank for Savings, for the  
year 1831.**

Pursuant to the provisions of an act, entitled "An act to incorporate an association by the name of the Bank for Savings, in the city of New-York," the trustees now beg leave to present their thirteenth

**REPORT, AS FOLLOWS :**

*First.*—That the trustees have received from sixteen thousand three hundred and fifty-seven depositors, from the first of January to the thirty-first of December, 1831, the sum of eight hundred and ninety-two thousand, four hundred and sixty-seven dollars and thirty-three cents, in the following manner:

In the month of January,	from	1,368 depositors,	\$67,897 88
“ February,	“	989	48,181 10
“ March,	“	1,248	63,383 40
“ April,	“	1,034	55,076 85
“ May,	“	1,331	81,988 44
“ June,	“	1,755	106,763 54
“ July,	“	1,700	89,952 43
“ August,	“	1,417	84,755 00
“ September,	“	1,535	76,367 33
“ October,	“	1,397	73,158 08
“ November,	“	1,140	59,978 59
“ December,	“	1,443	84,963 79
<hr/>			
16,357			<hr/>
			\$892,467 33

of which number 3,769 are new accounts opened with the bank,  
and 12,588 are re-deposits.

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16,357

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*Second.*—That the sum of six hundred and twenty-five thousand, five hundred and fifty-eight dollars and ninety-one cents, have been drawn out by nine thousand, six hundred and five depositors. Of this number 1,783 have closed their accounts.

In the month of January,	paid	975 drafts, ....	\$69,113 84
“ February,	“	820 “ ....	44,036 73
“ March,	“	746 “ ....	44,370 22
“ April,	“	1,013 “ ....	82,738 67
“ May,	“	872 “ ....	51,017 97
“ June,	“	502 “ ....	26,834 09
“ July,	“	889 “ ....	62,470 09
“ August,	“	768 “ ....	48,497 55
“ September,	“	677 “ ....	49,249 46
“ October,	“	865 “ ....	65,027 52
“ November,	“	715 “ ....	50,995 50
“ December,	“	763 “ ....	31,207 27
		<hr/>	<hr/>
		9,605	\$625,558 91
		<hr/>	<hr/>

*Third.*—The depositors have been classed under the following heads of professions and occupations:

Attornies, .....	14	Brush-makers, .....	4
Accountants, .....	9	Button-makers, .....	1
Auctioneers, .....	3	Boot-makers, .....	1
Ashman, .....	1	Boot-cleaners, .....	1
Architect, .....	1	Bandbox-makers, .....	1
Appraisers, .....	2	Brokers, .....	6
Blacksmiths, .....	51	Boatmen, .....	5
Barbers, .....	10	Blacking-maker, .....	1
Boarding-house keepers, ..	41	Brewer, .....	1
Booksellers, .....	3	Calico printer, .....	1
Butchers, .....	9	Cooks, .....	94
Bookbinders, .....	13	Clerks, .....	115
Bakers, .....	40	Chamber-maids, .....	20
Brass-founders, .....	7	Cartmen, .....	71
Book-folders, .....	4	Carpenters, .....	140
Boat-builders, .....	2	Chair-makers, .....	6

Coachmen, . . . . .	14	Inspectors, . . . . .	9
Curriers, . . . . .	7	Iron-mongers, . . . . .	1
Carvers, . . . . .	13	Iron-rollers, . . . . .	1
Coopers, . . . . .	18	Jewellers, . . . . .	12
Cabinet-makers, . . . . .	32	Justice of the peace, . . . . .	1
Confectioners, . . . . .	11	Laborers, . . . . .	342
Comb-makers, . . . . .	3	Locksmiths, . . . . .	2
Collectors, . . . . .	9	Lamp-lighters, . . . . .	2
Coppersmiths, . . . . .	2	Leather-dressers, . . . . .	6
Coach-makers, . . . . .	3	Last maker, . . . . .	1
Cotton-winders, . . . . .	1	Letter-carrier, . . . . .	1
Coffee-burner, . . . . .	1	Milliners, . . . . .	21
Cap-maker, . . . . .	1	Mantua-makers, . . . . .	63
Cutlers, . . . . .	5	Masons, . . . . .	61
Chemist, . . . . .	1	Merchants, . . . . .	59
Cork-cutter, . . . . .	1	Musicians, . . . . .	7
Caulkers, . . . . .	2	Milkmen, . . . . .	6
Clothier, . . . . .	1	Miners, . . . . .	2
Cider dealer, . . . . .	1	Math. instrument makers, .	6
Domestics, . . . . .	422	Marshals, . . . . .	3
Distiller, . . . . .	1	Machinists, . . . . .	10
Druggists, . . . . .	11	Millwrights, . . . . .	12
Dyers, . . . . .	7	Marble-polishers, . . . . .	4
Dock-builder, . . . . .	1	Moulders, . . . . .	4
Engineers, . . . . .	9	Millers, . . . . .	2
Engravers, . . . . .	3	Maltsters, . . . . .	3
Founders, . . . . .	3	Morocco-dressers, . . . . .	2
Farmers, . . . . .	59	Nurses, . . . . .	63
Fishermen, . . . . .	5	Newsman, . . . . .	1
Furriers, . . . . .	4	Oystermen, . . . . .	8
Fruiterers, . . . . .	24	Ostlers, . . . . .	18
Fringe-maker, . . . . .	1	Pavers, . . . . .	2
Figure-maker, . . . . .	1	Potter, . . . . .	1
Grocers, . . . . .	58	Print-colorer, . . . . .	1
Gardeners, . . . . .	30	Pyrotechnist, . . . . .	1
Gold-beaters, . . . . .	2	Porter-bottlers, . . . . .	2
Grate-makers, . . . . .	7	Printers, . . . . .	43
Gas workmen, . . . . .	2	Pedlers, . . . . .	27
Goalers, . . . . .	4	Physicians, . . . . .	14
Glass-cutters, . . . . .	7	Porters, . . . . .	42
Gilders, . . . . .	2	Painters, . . . . .	33
Glazier, . . . . .	1	Preacher of the Gospel, . .	20
Gunsmith, . . . . .	1	Pilots, . . . . .	5
Guager, . . . . .	1	Pocket-book-maker, . . . . .	1
Glass-blower, . . . . .	1	Paper maker, . . . . .	1
Hatters, . . . . .	22	Portrait-painters, . . . . .	5
Hat-trimmers, . . . . .	10	Pawnbroker, . . . . .	1
Hucksters, . . . . .	13	Pump-makers, . . . . .	2
House-keepers, . . . . .	2	Paper-stainer, . . . . .	1
Harness-maker, . . . . .	1	Piano forte makers, . . . . .	6
Inspector of beef, . . . . .	1	Quarryman, . . . . .	1
Ink dealer, . . . . .	1	Rope-maker, . . . . .	1

Riggers, .....	9	Tobacconists, .....	6
Seamstresses, .....	119	Type-founders, .....	4
Ship-masters, .....	4	Turners, .....	11
Sailors, .....	35	Tavern-keepers, .....	17
Soldiers, .....	27	Trunk-maker, .....	1
Shipwrights, .....	9	Tanners, .....	12
Stone-cutters, .....	23	Tinners, .....	13
Saddlers, .....	10	Tallow chandlers, .....	4
Shoe-makers, .....	103	Upholsterers, .....	4
Sail-makers, .....	10	Umbrella-makers, .....	4
Sugar-bakers, .....	14	Undertakers, .....	2
Shoe-binders, .....	3	Varnish-maker, .....	1
Sawyers, .....	10	Veterinary surgeon, .....	1
Students, .....	7	Victuallers, .....	3
Saw-filer, .....	1	Waiters, .....	58
Spinner, .....	1	Weavers, .....	42
Slaters, .....	5	Washerwomen, .....	38
Segar-makers, .....	2	Watchmakers, .....	9
Sausage-makers, .....	2	Wheelwrights, .....	5
Silversmiths, .....	15	Whitewashers, .....	4
Soap-maker, .....	1	Whitesmith, .....	1
Skinner, .....	1	Watchmen, .....	1
Saw-maker, .....	1	Weigh-master, .....	1
Steward, .....	1	Well-digger, .....	1
Stock-maker, .....	1	Wire-drawer, .....	1
Stucco man, .....	1	Waterman, .....	1
Teachers, (female) .....	27	Not described, being mi-	
Teachers, (male) .....	24	nors, &c. ....	410
Tailors, .....	101		
Tailoresses, .....	83		
			<hr/>
			3,769

## DESCRIPTION OF PERSONS.

Minors, (female) .....	99	Trustees, depositors in trust	
Minors, (male) .....	90	for children, orphans, &c.	406
Orphans, .....	10	Colored persons, .....	157
Apprentices, .....	5		
Widows, .....	372		<hr/>
Single women, .....	750		1,889

*Fourth.*—The deposits have been made in the following sums :

From	1 to	5 dollars, .....	1,427
"	5 to	10 "	2,164
"	10 to	20 "	3,251
"	20 to	30 "	2,132
"	30 to	40 "	1,177
"	40 to	50 "	1,654

Carried forward, .....

Brought forward, .....				
From	50 to	60 dollars,	.....	658
"	60 to	70	" .....	389
"	70 to	80	" .....	387
"	80 to	90	" .....	284
"	90 to	100	" .....	986
"	100 to	200	" .....	1,162
"	200 to	300	" .....	380
"	300 to	400	" .....	128
"	400 to	500	" .....	103
"	500 to	600	" .....	34
"	600 to	700	" .....	13
"	700 to	800	" .....	12
"	800 to	900	" .....	5
"	900 to	1,000	" .....	7
"	1,000 to	2,000	" .....	4
				<hr/>
				16,357
				<hr/>



# Tt ion, from the commencement of its

REPAID.			
To	369 drafts,	.....	\$39,622 84
	1,274 "	.....	113,659 69
	1,802 "	.....	158,761 00
	2,925 "	.....	230,311 97
	3,314 "	.....	258,494 01
	4,514 "	.....	443,033 52
	3,002 "	.....	305,900 66
	6,476 "	.....	513,247 63
	7,246 "	.....	530,051 78
	9,085 "	.....	628,267 15
Fr	9,376 "	.....	573,953 05
	9,278 "	.....	553,747 37
	9,605 "	.....	625,558 91
<u>68,266</u>			<u>\$4,974,609 48</u>





*The funds of the Institution are invested in and consist of,*

1st. Funded debt of the State and city of New-York, Pennsylvania and Ohio canal stock, at the par value,.....	\$2,448,759 18
2d. Bond and mortgage of the public school society,	60,000 00
3d. Real estate, a building for the accommodation of the business of the bank, and furniture,..	22,292 78
4th. Cash uninvested,.....	160,631 87
	<hr/>
	\$2,691,683 83
	<hr/>

JOHN PINTARD, *President.*

ROBT C. CORNELL, *Secretary.*



account

CR.

			\$46,777 43
39,113 84	.....		67,894 02
	.....	\$4,685 00	
14,036 73	.....		48,180 12
	.....		63,381 65
14,370 22	.....	23,541 75	
	.....		55,075 93
32,738 67	.....	2,602 50	
	.....		36,600 00
51,017 97	.....		81,829 77
	.....		106,914 40
26,834 09	.....	33,467 74	
	.....		134,335 00
	.....		89,955 85
62,470 09	.....	4,062 50	
	.....		84,821 65
284 10	.....	165 00	
	.....		76,362 48
48,497 55	.....	22,034 25	
	.....		73,158 64
	.....	2,145 00	
49,249 46	.....		59,776 44
	.....		84,960 88
65,027 52	.....	33,840 80	
	.....	1,579 64	
50,995 50	.....		
31,207 27	.....	\$128,124 18	
	.....		128,124 18
			\$1,238,148 44
46,954 95			
4,718 61	.....		\$160,631 87
60,631 87			
38,148 44			

J. OOTHOUT, Treasurer.



**No. 256.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**ANNUAL REPORT**

**Of George Smith, an Inspector of Beef and Pork for  
the city of Troy.**

*To the Honorable the Legislature of the State of New-York,*

I, George Smith, inspector of beef and pork, residing in the city of Troy in the county of Rensselaer, do hereby certify and report, that since the first day of February, 1831, I have inspected under and by virtue of my said office, ten hundred and seventy-five barrels of pork, as follows :

Mess, . . . . .	208 barrels.
Prime, . . . . .	604   “
Cargo, . . . . .	263   “

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**Total, . . . 1,075**

**The fees for the inspection of which is \$150 25.**

**GEORGE SMITH.**

**Troy, January 28, 1832.**

**[A. No. 256.]**



**No. 257.**

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**IN ASSEMBLY,**

**March 6, 1832.**

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**ANNUAL REPORT**

**Of Dennis Belding, Inspector of Beef and Pork for  
the city of Troy.**

*To the Honorable the Legislature of the State of New-York.*

I, Dennis Belding, inspector of beef and pork, residing in the city of Troy, in the county of Rensselaer, do hereby certify and report, that since the first day of February, 1831, I have inspected under and by virtue of my said office, thirteen hundred and sixty-three barrels pork, as follows:

Mess,..... 544 barrels.

Prime,..... 809 “

Total, .... 1,363 barrels.

The fees for the inspection of which, is \$204 45.

**DENNIS BELDING.**

*Troy, January 31, 1832.*

[A. No. 257.]





**IN ASSEMBLY,**

**March 26, 1832.**

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**REPORT**

**Of the Committee on Roads, Bridges, &c. on the  
petition of sundry Inhabitants of Saratoga county.**

**Mr. Juliand, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to which was referred the petition of sundry inhabitants of the county of Saratoga,**

**REPORTED :**

**That the petitioners represent, that the village of Schuylerville in said county has been recently incorporated, and by their incorporation are constituted a separate road district; in consequence of which, some of the highways in the neighborhood of the village are deprived of the labor usually bestowed upon them, and those who are left to keep them in repair are unequal to the task. In one district in which there was formerly 205 days' work assessed, there is now but 23 days' assessed.**

**The petitioners, therefore, ask for the passage of a law granting them relief from what they consider unequal taxation.**

**Your committee are of opinion, that the proper manner of granting the relief asked for, would be to repeal so much of the act incorporating the village of Schuylerville as constitutes said village a separate road district; and had there been notice given of such intended application, and the facts set forth in the petition remained undisputed, then it would have been proper for your committee to have recommended an amendment which would have effected the object of the petitioners.**

But there is no evidence that the notices required by law have been published, and the inhabitants of that village may be ignorant of the change sought to be effected, and the same reasons that induced the Legislature to incorporate this provision in their village charter may still exist.

Your committee are therefore of opinion that the prayer of the petitioners ought not to be granted, and recommend to the House the adoption of the following resolution.

*Resolved*, That the petitioners have leave to withdraw their petition.

**No. 259.**

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**IN ASSEMBLY,**

**March 27, 1832.**

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**REPORT**

**Of the select committee, on the petition relative to  
the office of Sheriff.**

The select committee to whom was referred the petition of sundry persons relative to the fees of sheriffs and the manner of serving process,

**REPORT:**

The petitioners represent, that by the operation of the Revised Statutes in authorising the commencement of suits by declaration, the business of sheriff has been much injured, and that the responsibility of such service instead of being confined to the sheriff, the only proper officer for the service of process, is now extended to irresponsible individuals, and frequently to boys, not fully aware of the important duty to which they are deputed. No good reason can be assigned for a departure from the former mode of proceeding, and your committee are of opinion that the service of declaration should be placed on the same footing with the service of other original process, and confined to the same responsible executive officer. In conformity to these views, the committee ask leave to introduce a bill.



**No. 260.**

**IN ASSEMBLY,**

**March 27, 1832.**

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**MESSAGE**

**From the Governor, relative to the adulteration of  
Potash.**

**TO THE LEGISLATURE.**

**GENTLEMEN,**

I consider it my duty to lay before you the accompanying correspondence.

Document No. 2 contains the first information which I received of the existence of the abuse of which its writer complains. On the receipt of that letter, I felt the propriety of inquiring farther into the matter, and addressed a note, (Document No. 1.) to Professor Beck, the very learned and distinguished Principal of the Academy in this city. He gave immediate attention to it, and I received from him documents No. 3 and 4.

Number 4 is a memoir from the pen of Lewis C. Beck, M. D., the learned Professor of Chemistry in the same institution. This memoir confirms the statements in Document No. 2, in relation to the existence of the fact of the adulteration of Potash, its mode and effect. It also gives a concise and lucid view of the chemical principles by which the adulteration is effected, as well as the very simple method of detecting it.

I can add nothing by way of illustration, nor can I conceive that any arguments are necessary to urge your attention to the subject, for the purpose of speedily providing a remedy.

**E. T. THROOP.**

*Albany, March 27, 1832.*

[A. No. 260.]



## DOCUMENTS.

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[No. 1.]

*Copy of a Letter to T. Romeyn Beck, M. D.*

*Saturday Morning, March 10, 1832.*

DEAR SIR,

I send you herewith a letter which I have lately received, in relation to a new and ingenious method of adulterating potash.

The matter concerns an important article of commerce, and if the facts and conclusions of the letter writer are tenable, the attention of the Legislature should be called to a correction of the abuse.

I know of no person more competent to give me satisfactory advice upon this subject than yourself, and if you have leisure to attend to it, I am sure that no person would more cheerfully lend his services in this way to promote the public interest.

With this apology for troubling you, permit me to subscribe myself,

With very great respect,

Your obedient servant,

E. T. THROOP.

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[No. 2.]

*February 28, 1832.*

To His Excellency ENOS T. THROOP.

SIR,

I am persuaded that, to secure your attention to the following suggestions, I need only assert their aim to be the public good; which fact too, I doubt not, will plead my apology for addressing one of your station, to whom I have not the honor of being personally known.

It may not, perhaps, be familiar to you, that within the last year or so, a supposed improvement in the manufactory of potash has been very generally introduced into this State. It consists chiefly in the addition of a certain quantity of common salt (one pound to each bushel,) to the ashes, before adding the water to extract the alkali. The result is, a gain of about twenty per cent in the quantity of potash obtained from any given quantity of ashes; which potash is so pure in appearance that it has passed inspection, and been branded as "first quality."

If my views of chemistry are correct, the above process, instead of yielding a greater quantity of potash, introduces a most danger-

ous adulteration, amounting in weight to more than the quantity of salt used.

For the common salt, muriate of soda, (or according to the newer nomenclature, chloride of sodium) is decomposed, and muriate of potash, (or chloride of potassium,) and soda remain: thus a part of the potash which might have been procured is destroyed, being converted into a muriate, and there is the additional adulteration of the amount of soda which existed in the salt made use of to effect this purpose.

This fraud must operate with peculiar severity upon the consumer, since if the same amount of adulteration was made with sand or stone, those articles could easily be separated by "solution" and "filtration;" but now, when for any purpose of art pure potash is needed, I scarce know any method by which it could be procured from the article adulterated in the manner above described. It is presumed that many who are engaged in making potash in this way are unconscious of the dishonest character of their conduct.

The evils of this state of things are obvious: 1st, It must destroy the character of our potash in the foreign market, and make the trouble and expense of inspection of no avail: 2d, If such potash is suffered to pass for best quality, it holds out by the operation of law, a premium of more than 20 per cent to induce the manufacturer to be dishonest.

A third bad consequence is this, many persons engaged in making potash, who are sincerely desirous of doing uprightly, are in doubt how to act. If they attempt to manufacture the unadulterated article, they are thrown out of employment, because they can not afford to pay so high a price for ashes as their neighbor, who makes on the "patent plan," and they dare not risk the sending to market a large quantity of the "new fashioned potash," lest its inferiority should in the mean time be discovered, and by its being pronounced "unbrandable" they should be totally ruined.

I am assured too, from a very respectable source, that many fair-dealing men, in various parts of the country, are at this moment engaged in making the last mentioned article, in the full belief that it is of the best quality, and will command the highest price; and if they are permitted to proceed to make up their whole winter stock in this way, and are eventually disappointed in their reliance on the market, (as they must and ought to be,) it will doubtless reduce from competence to absolute want, many worthy and industrious individuals.

I would respectfully submit to your Excellency whether this may not be a fit subject for a communication, from yourself to the Legislature. The remedy might be found in requiring of the inspectors, instead of relying on ocular observation, (which I am informed is the present mode,) to apply the appropriate chemical tests, such as nitric acid of a given strength, &c. to determine the purity of the article submitted to their examination.

For the increase of trouble, if proper, allow an increase of compensation. By this means all inducement to fraud would cease to operate, the purest potash would be made, it would maintain a high character, command the highest price, and all parties, both manufac-



turers and consumers, would be gainers. The progress of the patent manufacture might be at once arrested, by making it known, through the public prints, that potash made in this way would not receive the approbation of the inspector.

Lest the motive of this communication should be misapprehended, it is proper to state, that I am not now, never have been, and never expect to be, in any way, concerned in the production or commerce of potash. If it should be necessary to adduce my name, in substantiating the facts above stated, I have no objection to its being used; otherwise, I would prefer not to be known as concerned in this matter.

Very respectfully, yours, &c.

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[No. 3.]

*Copy of a Letter from T. Romeyn Beck, M. D.*

*Albany, March 12, 1832.*

DEAR SIR—

In reply to the communication which you were pleased to forward to me, I beg leave to refer you to the accompanying paper, from my brother, Dr. Lewis C. Beck. His attention was called to the subject of the adulteration of potash last summer, and several specimens submitted to him were analyzed, with a view of ascertaining their impurities. I beg leave to add my full concurrence in the means that he suggests for the future inspection of potash, as indeed the only ones by which the character of that article can be raised in our own and foreign markets.

With great respect, I remain,

Your most obedient servant,

T. ROMEYN BECK.

His Excellency ENOS T. THROOP,

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[No. 4.]

*On the adulteration of commercial Potash, by Lewis C. Beck.*

During the last summer I was called on by Mr. Van Benthuisen, an inspector of potash in this city, with sundry specimens of potash, for the purpose of having them submitted to a chemical examination. About the same time, I was also requested by a large dealer in the article, residing in the south-western part of the State, to examine some specimens of potash said to have been manufactured by a new process, and which, so far as I could learn, consisted in

the addition of an extra quantity of lime mixed with the ashes, and the use of hot instead of cold water as the dissolving agent.

From the experiments which I made upon the specimens which I had thus received, I was at once struck with their impurity, especially when compared with the American potash examined by the celebrated French chemist, Vauquelin, in the early part of the present century. Upon further examination, I was satisfied that this great deterioration was owing to the addition of various substances, either through ignorance of their operation, or with the designed purpose of fraud. Considering this an article of great importance to the State, I suggested to Mr. Van Benthuisen that it would be a proper subject for legislative interference, and recommended to him a communication of the facts to your Excellency.

Since that time, I have examined the subject more in detail, and have ascertained that the adulteration of potash by lime and common salt and other substances, is becoming quite extensively practised. Two patents have already been secured, which need only to be read to convince almost any person how greatly the processes proposed to be pursued must injure the purity of the potash. If I am correctly informed, several manufacturers have already adopted one of these processes, with the mistaken idea that a larger amount of the alkali can be thus obtained.

In order to make my views on this subject more clear, I will briefly state the principles upon which the pure commercial potash is obtained.

The more probable opinion concerning the formation of the carbonate of potash (which is the state in which commercial potash occurs,) by the incineration of wood, is that the acetate of potash exists in the wood, and that this, by calcination, is converted into the carbonate. The wood is burned upon the earth, in a situation protected from the wind, the result of which is the formation of carbonate of potash, and several other soluble salts, together with some substances upon which water has no action. By lixiviation with hot or cold water, the alkaline part is dissolved out, and this solution, when boiled to dryness, leaves behind a dark brown saline mass, consisting of carbonate of potash, a minute portion of one or two other salts, and a small quantity of vegetable inflammable matter; and in this state it is known in commerce by the name of *Potash*.

Calcination at a moderate heat, completely burns off the coloring particles, and the salt becomes of a spongy texture, and beautiful bluish white tinge; it is then called *Pearlash*.

Such are the simple principles upon which these articles are manufactured. But instead of following them, various substances are added, either previous to, or during the process of boiling, *ostensibly* for the purpose of facilitating the manufacture; but which *REALLY* have the effect of increasing the weight of the resulting mass, at the expense of its purity. Of these substances, lime and common salt are perhaps at present the most extensively employed.

*Lime*.—This substance operates very differently when mixed with the ashes, from what it does when thrown into the clear lixivium. In the former case the lime combines with the carbonic acid of the carbonate of potash, and forms an insoluble carbonate of

lime, which remains unacted on by the water, while the potash is rendered more pure. This, indeed, is the process by which chemically pure potash is obtained. But when the lime is added to the clear liquor, and then boiled up without a second filtration, a large quantity of carbonate of lime (common limestone) is the result. This fraud can be detected by the want of solubility in the potash, and the effervescence of the insoluble portion upon the addition of a dilute acid.

**Common salt.**—The addition of this substance to the lixivium, is a most dangerous fraud, as it injures the quality of the potash, while its presence cannot be very easily detected. The reason of this will be evident from the fact long known to chemists, that when common salt is added to carbonate of potash in solution, a double decomposition takes place, the result of which is the formation of muriate of potash and carbonate of soda; the former being wholly useless, the latter being employed for other purposes than those to which common potash is converted.

The danger attending this adulteration is, that muriate of potash is a deliquescent salt, and highly soluble in water, agreeing in these respects with the carbonate of potash. Carbonate of soda is also soluble, so that by the ordinary mode of inspection, such samples of supposed potash would probably be branded as first quality.

From these facts it is evident that unless a more efficient mode of inspection is established, the time is not far distant when our potash will be completely driven from the market. The mode of inspection must of course depend upon chemical principles, as the solubility of the potash and the effect of acids of known strength upon it.

When potash is adulterated with substances of little solubility, the fraud may be detected by ascertaining how much of one ounce will dissolve in two or three ounce measures of pure water. The pure salt will completely dissolve in two parts of water. But when substances of easy solubility are used for adulterating potash, as for example common salt, they may be detected as follows: The inspector should be furnished with a quantity of sulphuric acid, of uniform strength. It should be ascertained by experiment, exactly how much of this acid is required to neutralize a given quantity of pure potash. Having ascertained this fact, one ounce (or more) of the potash to be inspected is dissolved in water, and to the clear solution a known quantity is added carefully, until the alkali is perfectly neutralized, a point which can be determined by test papers of litmus or turmeric.

Having ascertained the exact amount to neutralize the ounce of potash under examination, the quantity of pure potash; for as required to neutralize one ounce of pure potash, the amount of acid expended to that of pure potash under inspection. To avoid the necessity of determining its neutralizing power, specific gravity may be employed. According to the tables that can be used for this purpose, is sulphuric acid of gravity of 1.141. Of this, 355 grains by the saturation of 100 grains of carbonate

therefore, that quantity of the potash to be inspected in water, and gradually adding the test, so as to produce neutralization, we learn, by the quantity of acid expended, the quantity of real carbonate which has been acted upon; for as 355 is to 100, so is the weight of the test which has been used to the number required.

This or a similar mode of inspection is, in my opinion, the only one which will meet the case of the fraud which seems now to be so extensively attempted. Perhaps, however, a more complete chemical analysis of the samples of potash brought to our market, would suggest some modification of the process.

LEWIS C. BECK.

No. 261.

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**IN ASSEMBLY,**

March 27, 1832.

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**REMONSTRANCE**

**Of physicians and surgeons in the city of New-York,  
against the acts of the State Society, in relation  
to the prayer of the county medical society of New-  
York.**

*To the Honorable the Legislature :*

**THIS REMONSTRANCE RESPECTFULLY SHEWETH :**

That the medical society of the city and county of New-York did unanimously compose and forward to your honorable body a petition, praying for an alteration in the law regulating the practice of physic and surgery, whereby the examinations for licenses and degrees of doctor in medicine should be rendered faithful and impartial.

That previous to the opening of the present session of the Legislature, the medical society having fully and patiently discussed the several modes in which the examinations could be purified, and rendered adequate to the wants of the age and the increased means of instruction, did, in the month of October last, write a letter to the different medical societies, faculties, and colleges in the United States, suggesting that method which it had unanimously agreed to sustain :

That one of these letters was directed to the medical college of Fairfield, and another to the medical society of Albany, the members of which institutions constitute a large majority of the acting portion of the State Medical Society ; and that, therefore, the gen-

ttlemen who wrote the remonstrance of the "comitia minora" of the State Medical Society, must have known what the medical profession of New-York wished to effect :

That your petitioners are of the opinion that the county medical society of New-York, which consists of physicians and surgeons from all civilized countries, very many of whom have been educated in the most liberal and renowned seminaries of Europe, is much better qualified to devise and carry into effect a good system of medical examinations than any other body of professional men in the United States :

That the State Medical Society is and has been, for a number of years, in a dilapidated state, and consists, with a few occasional and rare exceptions, of physicians totally in the interest of the two colleges : [This institution was intended to be a great board of health, consisting of 56 delegates, from the different counties, with a large number of permanent and honorary members, whose duty it should be to assemble annually for the purpose of recommending to the Legislature such progressive improvements in the laws regulating the practice of physic and surgery as were called for by the revolutions in science, and by the increasing needs and resources of the State. But as direct application to the Legislature for these purposes is much more consonant with our institutions, and as the profession could have no adequate remuneration for travelling, in the dead of winter, from all parts of the State to the city of Albany, the charter of that society has long since become a dead letter to the practical and important portion of the profession; but it has been eagerly siezed upon by a few physicians residing in and near Albany, and preserved as a lever of no mean power in matters quite foreign to the objects for which it was granted.]

That the State Society, having acquired conventional interests of a monopolizing character, and of course being at variance with the real interests of medical societies in general, should not be regarded by your honorable body as expressing other sentiments than those of the college professors, whose interest it is to prevent the passage of a law which would demand a rigorous examination of their pupils :

That the conduct of the State Society and that of the medical college of New-York, in relation to the whole of this discussion, has

not only demonstrated the identity of their interests, but also the weakness of the cause. They have been called upon to discuss this subject through the public prints, by letter, and in the ample hall of the medical society, but have observed total silence, and that under circumstances which would have procured for them faithful, patient, and most attentive consideration. Why shun the primitive assemblies? Why pay no regard to the entreaties of a long suffering, neglected profession? Why refuse to reply when interrogated in the name of the public health, and that in conformity with legal motions? Why arraign the county society before the bar of the Legislature, as a runaway subject, claiming audience and protection beyond the pale of chartered supremacy? The reply is obvious.—The cause of academic secresy, so far at least as regarded the examinations for license, could not, for an instant, bear the test of forensic inquiry; the spirit of the age, and all testimony, oppose these secret usages :

That, as your memorialists have been informed, a few physicians have joined the professors of the Barclay-street medical school, in the city, in remonstrating against the report and bill of the medical committee of your honorable body; and that they have done this (so great is the influence of self-interest) after having attended the discussions of this subject in the county medical society, and voted for the institution of public and recorded examinations in that body.

Your memorialists, in conclusion, beg leave, summarily, to recapitulate :

1. That the State Society is no longer a representation of the medical profession; and that, notwithstanding this, it pretends, through its vice-president and censors, to establish the doctrine that the county societies have not the inalienable right of direct application to government.

2. That, because the State Society makes out a claim equal to that of being a third legislative house, and because it is only attended by the friends of a prejudicial and unnecessary medical monopoly, its voice, when raised against a prayer for freedom in teaching, and scrutiny in licensing, emanating from the great body of the New-York physicians, ought to be listened to with very great caution ;

§. That your memorialist unanimously protest against the conduct and tone of the State Society in reference to the medical society of New-York, and respectfully represent to your honorable body that they deem it of the utmost importance that the medical bill before your honorable body should become a law.

*New-York, March 23, 1832.*

Felix Pascalis, M. D.  
 Saml. Osborn,  
 M. H. Van Dyke,  
 James Downs,  
 Galen Carter,  
 Wm. Leo. Wolf,  
 W. Nelson, A. M.  
 James Anderson, M. D.  
 Jas. O. Smith, M. D.  
 Wm. A. Carecthus, M. D.  
 George Rogers,  
 Jas. Stewart, M. D.  
 Alexander Robertson, M. D.  
 D. Marvin, M. D.  
 A. O. Wilson, M. D.  
 J. H. Rogers, M. D.  
 Joseph Leo. Wolf, M. D.  
 Amos Pollard, M. D.  
 Abr. J. Bony,  
 James Campbell, M. D.  
 Geo. A. Muley,  
 James Sweeney,  
 John F. Gray, M. D.  
 Amos S. Miller, M. D.  
 Wm. J. Macneven, M. D.  
 James O. Pond, M. D.  
 D. E. Stearns, M. D.  
 H. S. B. Gram, M. D.  
 J. Baxter, M. D.  
 John W. Francis, M. D.  
 Tho. Boyd, M. D.  
 J. McNeilson, M. D.  
 John Stearns, M. D.  
 S. Blois,  
 Jno. C. Covel,  
 T. R. Hubbard, M. D.

G. Bancker, M. D.  
 John D. Counsell,  
 George Bush, M. D.  
 Benj. Bailey, M. D.  
 B. B. Edwards,  
 Frederick Graham,  
 M. J. Bailey,  
 Wm. McCaffry, M. D.  
 John F. Gray, M. D.  
 Austin Sherman,  
 J. J. Ruton, M. D.  
 Geo. Herriot,  
 G. S. Bedford, M. D.  
 David L. Rogers, M. D.  
 A. D. Wilson, M. D.  
 Lewis Post,  
 James Wright, M. D.  
 Robert H. Maclay, M. D.  
 Dnl. Lake, M. D.  
 Hartshorne Gregory,  
 Daniel Dayton,  
 Henry G. Dannel, M. D.  
 C. L. Smith,  
 Warren Vermeule,  
 Luke Davies, M. D.  
 Livingston Roe,  
 And. Landham, M. D.  
 Thos. Pitts, M. D.  
 Sanford R. Knapp, M. D.  
 Geo. Downer,  
 Field Vermeule, M. D.  
 Archibald B. Simpson, M. D.  
 J. F. Daniel Lobstein, M. D.  
 A. E. Churchill, M. D.  
 Z. H. Harris, M. D.  
 H. McLean, M. D.



Wm. Hibbard, M. D.  
J. W. Woodward,  
Thomas S. Barrett,  
Luke Barker, M. D.  
Lewis Hallock, M. D.  
John Graham, M. D.  
Samuel S. Kuypers, M. D.  
W. Channing, M. D.  
David M. Halliday,  
H. F. Judson, M. D.  
Francis W. Walsh, M. D.  
David Rogers, M. D.  
Franklin Ransom, M. D.  
John M. Bernhisel, M. D.  
John Hunter, M. D.  
H. C. Throop,  
Richard Vermeule,  
Edward Conway,  
W. M. Ireland, M. D.  
Daniel L. M. Piexotto,  
Wm. Anderson,  
W. P. Piatt,  
J. H. Rogers, M. D.  
Peter F. Clark,  
Chas. H. Van Zandt, M. D.  
Jno. Dunham,  
Mark Stevenson, M. D.  
Washington Ritter, M. D.  
Ch. B. Cleeve, M. D.  
Lucas S. Comstock,  
S. R. Kirby,  
Wm. Murphy,  
Joseph H. Ray,  
John W. Rafferty,  
N. U. Tompkins,  
Joseph. B. Day,  
Geo. W. Downing,  
Philip Van Arsdale, M. D.  
Saml. C. Ellis, M. D.  
Jacob T. Gifford, M. D.  
Wm. H. Ellis, M. D.  
Wm. Usher, M. D.  
Wm. McIntosh,

M. Lawrence, M. D.  
Talmadge Sutherland,  
Hampton Dunham,  
Robert Leggett, M. D.  
Geo. E. F. Carral,  
N. Edson Sheldon,  
A. G. Hull,  
Saml. Throckmorton, M. D.  
Walter C. Palmer, M. D.  
Elias F. Nichols,  
H. Deffinbaugh, M. D.  
Geo. A. Sandham,  
Jno. R. Hardenbrook, M. D.  
W. Valentine,  
John Lee,  
Israel Green,  
David M. Reese, M. D.  
Chs. H. Jessup.  
Saml. Fullerton,  
David L. Thompson, M. D.  
P. A. Burling, M. D.  
Charles A. Lee, M. D.  
Abraham D. Clement, M. D.  
Arthur Server,  
J. McClawry,  
James Barry, M. D.  
David Austin, M. D.  
S. Wilson Kellogg, M. D.  
Jno. Harper, M. D.  
Raymond Joyce,  
Luke Flaherty, M. D.  
Wm. M. Colgar, M. D.  
Wm. Stewart,  
P. P. Ruckel, M. D.  
H. Van Hoevenburgh,  
James Cameron,  
Edward Bleeker,  
Samuel L. Griswold, M. D.  
Wm. Williamson, M. D.  
Howard Lee, M. D.  
Benj. R. Robson,  
H. F. Lentz,  
Darling B. Whitney.



**No. 262.**

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**IN ASSEMBLY,**

**March 28, 1832.**

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**REMONSTRANCE**

**Of Joseph M. Smith and others, of the city of New-York, against any alteration of the law regulating the practice of physic in this State.**

*To the Honorable the Legislature of the State of New-York,  
in Senate and Assembly represented.*

The undersigned, professors of the College of Physicians and Surgeons in the city of New-York, having understood that a bill has recently been presented to your honorable body, proposing certain important changes in the existing laws of the State in relation to the medical profession, would respectfully represent, that in their opinion said changes, if adopted, would be followed by consequences the most injurious to the character of the profession, and more especially to the prosperity of the Medical Colleges of the State. Not having, as yet, had an opportunity of examining the details of the bill which has been reported, the undersigned would, at this time, simply state, that the present medical law was passed after mature reflection, and has, thus far, met with the general approbation of the profession throughout the State. They would, therefore, respectfully solicit your honorable body not to make, at present, any alteration in the existing regulations on this subject.

*New-York, March 5th. 1832.*

**J. AUG. SMITH, M. D.**

*Professor of Anatomy and Physiology.*

**JOSEPH M. SMITH, M. D.**

*Professor of the Theory and Practice of Physic, &c.*

**EDWARD DELAFIELD, M. D.**

*Professor of Obstetrics, &c.*

JOHN B. BECK, M. D.

*Professor of Materia Medica, &c.*

JOHN TORREY, M. D.

*Professor of Chemistry and Botany.*

ALEX. H. STEVENS, M. D.

*Professor of Surgery.*

**No. 263.**

**IN ASSEMBLY,**

**March 24, 1832.**

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**REPORT**

**Of the committee on public lands, on the petition  
of David Haines.**

Mr. Crookshank, from the committee on public lands, to whom was referred the petition of David Haines, praying the conveyance to him by the State, of certain lands situate in the county of Sullivan,

**REPORTED:**

That the petitioner states that a gore of 125,000 acres of land, situate in the county of Sullivan, lying between the Minisink and great Hardenburgh patents, is the property of this State; that he resides on, and has improved a farm on this gore, and prays that a law may be passed authorizing the conveyance to him by the State, of that part of the gore now in his possession, for such consideration as the Legislature may think just.

The main question to be decided is, whether there really exists such a gore lying between those patents, as is asserted in the petition.

It is quite evident from an examination of the boundaries of some of the colonial grants, that the patents were issued without particular surveys, and some of those immense tracts of land were disposed of without the territory being so far explored as to fix monuments that would enable the patentees to locate their respective grants with any considerable degree of certainty.

In regard to the patents mentioned in the petition, it appears that the Minisink patent was first granted, viz: on the 28th day of Au-

[A. No. 263.]

gust, 1704; and the great Hardenburgh patent on the 20th day of April, 1708; but it appears from an inspection of the maps of those patents on file in the office of the Secretary of State, that the great Hardenburgh patent was first located and surveyed. This survey was made in July, 1749, forty years after the date of the patent.

To determine the question whether there is such a gore between this and the Minisink patent, as the petitioner supposes, it will only be necessary (in the opinion of the committee,) to refer to the northern line of the Minisink patent, and to the south line of the Hardenburgh patent.

The Minisink patent, although first granted, was not surveyed or located until the year 1762. And its northern boundaries described thus: "Beginning at a certain place in Ulster county, aforesaid, called Hunting house, or Yagh house, lying to the northeast of the land called Basher's land; thence to run west by north until it meets with the Fishkill, or main branch of the Delaware."

The southern bounds of the great Hardenburgh patent are described as "beginning at the Sandberg or hills at the northeast corner of the lands granted to Ebenezer Wilson, Dirck Vandenburg, and others, at Minisink, so running all along their line northwesterly, as the said line runs to the Fishkill, or river," &c. This Ebenezer Wilson, Dirck Vandenburg, &c. were the patentees of the Minisink patent.

From the surveys first made of these patents, it appears that a gore of about eight miles in width, was left unsurveyed and unclaimed by the patentees of either grant. This arose, probably, from the want of a definite knowledge of the localities of this wild and unexplored wilderness.

The Hardenburgh patentees commenced their survey at the Sandbergh or Small Yagh House, and the Minisink patentees at the Big Yagh House, about eight miles distant; still the southern bounds of the Hardenburgh patent are described as running all along the northwesterly line of the Minisink patent; and, in the opinion of the committee, the error in locating these patents arose, probably, from the Hardenburgh patentees mistaking the Little Yagh House for their starting point, when, perhaps, the Big Yagh House was the point intended in the grant. It seems that the Hardenburgh patentees have come to this conclusion, as they have subsequently surveyed this supposed gore, and taken possession of it as a part of their patent.

A certified copy of the boundaries of the Hardenburgh and Minisink patents is annexed to this report, and marked A. The report of the Surveyor-General, made in 1816, on the subject matter of Mr. Haines' petition, and also the statement on this subject of Jacob Trumbour, a deputy surveyor, are annexed, marked B and C.

It further appears, from the papers accompanying the petition of Mr. Haines, and from the printed documents of this House, that this matter was before this House in 1816; that it was referred to the Surveyor-General, who reported substantially against the prayer of the petition; and, during this session, this claim has been referred to the Commissioners of the Land-Office, who have adopted the opinion of the Surveyor-General, as the basis of their report. (See Assembly printed document, No. 200.)

Your committee, from all the examination they have been able to make, would briefly remark, *that they are not satisfied that any such gore exists between those patents as is asserted in the petition: and were they of a contrary belief, their opinion would be, that in as much as this supposed gore is now in the possession of persons claiming to hold the same under the great Hardenburgh patent, that their title ought not to be questioned by Legislative enactments.* A court of law is the proper tribunal to which the question ought to be referred.

Your committee are, therefore, of the opinion that the prayer of the petition ought not to be granted.

A. CROOKSHANK, *Chairman.*





## DOCUMENTS.

( A. )

### *Bounds of Rochester, Minisink and Hardenburgh Patents.*

#### MINISINK.

**Bounds of Matthew Ling & Co.'s patent. Dated 28th day of August, 1704.**

All that part of the said tract of land so purchased by them, as aforesaid, lying and being in Orange and Ulster counties aforesaid, beginning at a certain place in Ulster county aforesaid called Hunting House, or Yagh House, lying to the northeast of the land called Bashes' land, thence to run west by north until it meet with the Fishkill or main branch of Delaware river, thence to run southerly to the south end of Great Minisink Island, thence due south to the land lately granted to the above named John Bridges and company, and so along that patent as it runs northward, and the patent of Capt. John Evans, and thence to the place it first began.

#### *(Patentees' Names.)*

Matthew Ling, Ebenezer Wilson, Philip French, Dirck Vandenberg, Stephen De Lancey, Philip Rokeby, John Corbett, Daniel Honan, Caleb Cooper, Wm. Sharpas, John Bridges, Robert Milward, Thomas Wenham, Edmund Mott, Lancaster Syms, John Person, Benjamin Aske, Petrus Bayard, John Chollwell, Peter Fauconnier, Henry Swift, Hendrick Tenicke and Jarvis Marshall.

**Bounds of the Hardenburgh Patent. Dated the 20th day of April, 1708.**

A certain tract of vacant and unappropriated land, situate in the counties of Ulster and Albany, beginning at the sand bergh or hills at the northeast corner of the lands granted to Ebenezer Willson, Derick Vandenberg, &c. at Minisink, so running all along their line northwesterly as the said line runs to the Fishkill or river, and so to the head thereof, including the same, thence on a direct line to the head of a certain small river, commonly known by the name of Cartwright's kill, and so by the northerly side of the said kill or river to the northermost bounds of Kingstown, on the said kill or river, thence by the bounds of Kingstown, Hurley, Marbletown, Rochester, and other patented lands, to the southward thereof, to the said sand bergh, the place where it first began.

**Bounds of Rochester Patent. Dated June 25th, 1703.**

All that tract or parcel of land lying and being in the county of Ulster aforesaid, and beginning at the south bound of the land now in the possession of John Van Camps, from thence running with a southeast line to the land of Capt. John Evans, and so along the

northwest bounds of the said Capt. Evans his land till you come over against the sand hills, from thence with a northwest line to the great mountains, commonly called the blue hills, thence northeast something northerly along the said hills to the bounds of Marbletown, and from thence along the bounds of Marbletown to the place where first began.

STATE OF NEW-YORK, }  
 SECRETARY'S OFFICE. }

I certify the preceding to be true extracts of certain letters patents, as of record in this office.

ARCH'D. CAMPBELL,  
 Dep. Secretary.

March 28, 1816.

( B. )

*Report of the Commissioners of the Land-Office, on the petition of David Haines.*

The Commissioners of the Land-Office, on the petition of David Haines, referred to them by the honorable the Assembly,

REPORT :

That in 1816, a petition of similar import was presented to the Legislature, and referred by the Assembly to the Surveyor-General, who made a report thereon, which does not appear on the printed Journals of the Legislature; a copy thereof is, therefore, inserted in this report. It is as follows :

“ That the petitioners state that they, with many others, are settled on lands which they suspect to be a gore between the great Hardenburgh and Minisink patents; that the persons from whom they have purchased, pretending to be the owners, refused to give them any other than quit claim deeds; and apprehensive that such titles may not be secure, the petitioners pray that an investigation may be made to ascertain whether said lands do not belong to the State; and if so that they may receive grants from the State. This seems to be the purport of the petition. The Minisink patent, granted to Matthew Ling, Ebenezer Wilson, and others, on the 28th August, 1704, has its northern bounds described thus :

“ ‘ Beginning at a certain place in Ulster county aforesaid, called Hunting-House, or Yagh-House, lying to the north-east of the land called Basher-land, thence to run west by north, until it meet with the Fishkill, or main branch of Delaware river.’

“ The great Hardenburgh patent, granted to Johannis Hardenburgh and others, on the 20th April, 1706, has its southern bounds thus described :

“ ‘ Beginning at the Sandebergh or Hills, at the northeast corner of the lands granted to Ebenezer Wilson, Dirck Vandenberg, &c.,

at Minisink, so running all along their line north-westerly, as the said line runs to the Fishkill or river.'

"It is a well established fact that the places known by the name of Sandebergh and Yagh-House are several miles apart from each other. The former is the place of beginning of the Hardenburgh patent, and the latter of the Minisink patent; and were it not for the words in the Hardenburgh patent, 'so running all along their line,' that is, of the Minisink patent, there would be no doubt of the existence of the gore alleged in the petition; but this part of the description favors a contrary interpretation, and accordingly it appears from the map of the Hardenburgh patent, that it has been partitioned among the proprietors thereof. Whether there has ever been a solemn investigation of this question, the Surveyor-General is not informed."

The committee to whom this report, together with the petition, was referred, reported, "That they concurred with the opinion of the Surveyor-General."—[See Assembly Journal of 1816, p. 570.]

As it is probable that the petitioner has considered this as not a decisive answer to his prayer, the Commissioners of the Land-Office would, in order to prevent a repetition of similar applications, respectfully recommend that the Legislature give an explicit expression of its views respecting the subject matter of the petition. The Commissioners of the Land-Office have nothing to add to the facts and inferences contained in the Surveyor-General's report, and the documents which accompany the petition.

Respectfully submitted.

March 13th, 1832.

SIMEON DE WITT, *Surveyor-General*.  
SILAS WRIGHT, JR. *Comptroller*.  
A. KEYSER, *Treasurer*.

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( C. )

*Report of Jacob Trumbour, relative to the boundaries of the Minisink and Hardenburgh patents.*

To the SURVEYOR-GENERAL.

SIR :

Being familiar with the subject matter of the case referred to you, having with John Kiersted, been employed to settle the line between the Minisink and Hardenburgh patents, some years since, I have in consequence of your call, thought it right to communicate the facts.

The Minisink patent is the oldest in date, which begins at a known place in Mamacotting, called the Yagh house or Hunting house, and runs from thence west by north, (see the patent date about 1704,) to the Delaware river; thence down the Delaware, &c. to the place of beginning.

The Hardenburgh patent, (dated about 1708,) at the Sandbergh or Hills, at the northeast corner of Ebenezer Wilson ; thence along the patent of Ebenezer Wilson & Co. (dated about 1694,) to the Fishkill or Delaware river ; thence up the same including the same to the head thereof ; and from thence with a straight line to the head of the Cartwright kill ; thence down and along said kill to the bounds of Kingston ; thence along the bounds of Kingston, Hurly, Marbletown, Rochester, and other patented lands to the southward thereof, (this was the patent of Capt. John Evans, in 1694,) to the place of beginning. Thus you see by the very description of the Hardenburgh bounds, it takes Ebenezer Wilson & Co. for its bounds ; as also the Delaware river and the other patented lands, instead of making new bounds for itself. There cannot, therefore, be any vacant lands or gore between, as they must necessarily join ; and these boundaries are given to include all the lands then vacant.

The only questions of controversy between these patents, have arisen from different surveyors at different times ; having varied from the old line in running so great a distance (probably by reason of different allowances of variation) between the Yaugh House and the Delaware.

Squatters have, at times, endeavored to make vacant lands between these patents, which has occasioned law suits, which have for several years past been put an end to.

All which is respectfully submitted.

JACOB TRUMBOUR.

Albany, 12th March, 1832.

**No. 264.**

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**IN ASSEMBLY,**

**February 16, 1832.**

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**MEMORIAL**

**Of the Protection Fire Insurance Company of the  
city of New-York.**

**TO THE HONORABLE THE LEGISLATURE OF THE  
STATE OF NEW-YORK.**

**The petition of the Protection Fire Insurance Company in the city  
of New-York,**

**RESPECTFULLY SHEWETH:**

**That your petitioners were incorporated as a fire insurance company, by an act of your honorable bodies, passed on the seventh day of April, in the year one thousand eight hundred and twenty-four: That the said corporation commenced business in the city of New-York, on the twenty-fourth day of May in the same year; but owing to losses and misfortunes, occasioned principally by the unlawful conduct and mismanagement of its directors, was compelled to, and did suspend the business of insurance, on or about the seventh day of August, in the year one thousand eight hundred and twenty-six.**

**And your petitioners further shew, that there are now outstanding in the hands of different individuals, stockholders of said company, one thousand six hundred and eighty shares of the capital stock of said corporation, exclusive of about three hundred and seventy-six shares hypothecated or pledged to the said corporation.**

**And your petitioners further shew, that there are no debts, claims or demands of any kind existing against the said corporation; and that there are only two policies of said corporation outstanding, one for one hundred dollars, to David Wicks the 2d, of Peekskill; and the other for five thousand dollars, to Conover Bowne, of Schooley's**

mountain in the State of New-Jersey : That the first of the said policies will expire on the twenty-first of September, one thousand eight hundred and thirty-two ; and the other on the twenty-second of April, one thousand eight hundred and thirty-two : That no loss has been sustained upon either of said policies, and that your petitioners have caused both said risks to be reinsured by the Farmers' Fire Insurance and Loan Company.

And your petitioners further shew, that the directors of the said corporation now have under their care, belonging to the said corporation, in good and available assets, about fifty thousand one hundred and sixty-eight dollars and sixty-nine cents, which they are desirous to divide and distribute to and among the stockholders of the said corporation, but which your petitioners are advised they cannot safely divide and distribute among the said stockholders, without the authority and under the sanction of a law to be passed by your honorable bodies.

And your petitioners further shew, that they have very large claims and demands against the former directors of the said corporation, for unlawful conduct and mismanagement by them in the concerns of the said corporation, and against other persons for contracts, engagements and liabilities incurred by them in relation to the said corporation, and for the recovery of which suits are now depending in the Court of Chancery and Supreme Court of this State.

And your petitioners further shew, that the situation of the said corporation is peculiar and singular, and has not been provided for or contemplated by the third article of the eighth chapter, title four, of the Revised Statutes, entitled "Of the voluntary dissolutions of corporations ;" inasmuch as your petitioners are not indebted to any persons whatever, nor have any outstanding claims or demands against them ; and inasmuch also as the said statutes allow a long time, not exceeding sixteen months, for the exhibition of claims and demands against the said corporation, none of which in fact exist ; and therefore any proceedings under the said statute would deprive the stockholders of the said corporation for a long time of the amount of monies which the directors of the said corporation are now willing and desirous to pay to them.

And your petitioners further shew, that although the now remaining capital of the said corporation is unproductive, so far as respects the business of insurance, yet that the said corporation is liable to taxation, and has been taxed under the statutes of this State.

And your petitioners further shew, that the dissolution of the said corporation would, as your petitioners are advised and believe, interfere with, impede, or bar the suits now depending against the former directors of the said corporation, for unlawful conduct and mismanagement, (the same being in the name of the said corporation,) and also with other suits which your petitioners may deem it necessary to institute.

And your petitioners further show, that the schedules hereunto annexed contain a true statement of the situation and condition of the said corporation, according to the books, and the best knowledge and belief of your petitioners.

Wherefore your petitioners pray that an act may be passed, authorising the directors of your petitioners to divide and distribute the funds and monies of the said corporation, or so much thereof as may be deemed expedient, to and among the stockholders of the said corporation, under the direction of the Chancellor of this State, or such other relief as the Legislature may deem proper.

By order of the Board of Directors, at the request of a number of the stockholders.

BEN. HUNTINGTON, *President*. [L. s.]

*New-York, January 10, 1832.*

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*City and County of New-York, ss :*

Before me, this twelfth day of January in the year 1832, personally appeared Benjamin Huntington, President of the Protection Fire Insurance Company of the city of New-York, who, being by me duly sworn, did depose and say that the matters stated in the foregoing petition are just and true, to the best of his the deponent's knowledge and belief.

R. M. POPHAM,  
*Commissioner of Deeds.*





**No. 265.**

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**IN ASSEMBLY,**

**March 29, 1832.**

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**REPORT**

**Of the committee on canals and internal improvements, in relation to canal fences from Saratoga dam to Waterford.**

**Mr. Woods, from the committee on canals and internal improvements, to whom was referred the petition of sundry inhabitants of the towns of Nortumberland, Saratoga, Stillwater, Halfmoon and Waterford, in relation to canal fences from Saratoga dam to Waterford,**

**REPORTED:**

**That the petitioners represent that they are the owners of lands on the line of the Champlain canal, between Saratoga dam and Waterford:**

**That upon the completion of that portion of this canal, the Canal Commissioners caused to be built, and for several years afterwards supported and maintained the fences upon the line of it, so as to protect and secure the lands and crops of the petitioners, at the expense of the State:**

**That the damages sustained by the petitioners in consequence of the canal's running through these lands have been appraised by the Canal Appraisers, leaving out of view, however, the building and maintaining the fences, which was at the time done at the expense of the State.**

**The petitioners further represent, that at at the time of the appraisement of their damages, it was expressly averred by the Canal Appraisers, and so understood both by them and by the petitioners,**

that these fences would be supported and maintained by the Canal Commissioners, at the expense of the State ; and the petitioners, therefore, in making out their account of damages submitted to the Appraisers, did not include any thing for the maintaining of these fences, nor was that item at all taken into the account in the assessment of their damages :

That for some time after the petitioners' damages were thus appraised, the Canal Commissioners supported and maintained the fences, and continued to do so until the Canal Board, upon an examination of the matter, came to the conclusion that there was no law authorising it ; since which time the Canal Commissioners have done nothing towards maintaining the fences, and your petitioners have either been obliged to do it themselves, or suffer their crops to be unprotected by a fence on the line of the said canal.

Your petitioners also represent, that these fences are now in a dilapidated and ruinous condition, and their crops and fields along the borders of the canal almost wholly unprotected ; that the fences require extensive repairs, and in some places rebuilding, in order to protect the property of your petitioners from depredations.

Your committee would further state, that the petitioners have introduced evidence before them to establish the material facts above set forth. A majority of your committee are therefore of the opinion, that the petitioners are entitled to relief, and that it would be manifestly unjust to require them, as they would be, or suffer their crops to remain exposed, to support and maintain these fences, without allowing them a fair and reasonable compensation for doing so. And to do this, and in view of the justice of their claims, your committee have prepared a bill for their relief, and now ask leave to introduce the same.

**No. 266.**

**IN ASSEMBLY,**

**March 10, 1832.**

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**REPORT**

**Of the committee on towns and counties, on the petition of sundry inhabitants of the towns of Alfred, Almond and Angelica, in the county of Allegany.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the towns of Alfred, Almond and Angelica, in the county of Allegany,**

**REPORTED :**

**That they have had the same under consideration ; and finding that your petitioners have not in any measure complied with the Revised Statutes in relation to surveys and maps, they therefore recommend the adoption of the following resolution :**

***Resolved,* That the prayer of the petitioners ought not to be granted.**



**No. 267.**

**IN ASSEMBLY,**

**March 28, 1832.**

**COMMUNICATION.**

**From John K. Paige, Clerk of the Supreme Court,  
Albany.**

**To the Hon. CHARLES L. LIVINGSTON,**  
*Speaker of the Assembly.*

**SIR,**

In obedience to a resolution of the Assembly of the 8th Feb. last, I have the honor herewith to transmit "a full statement of all the legal fees" received by me, as clerk of the Supreme Court, during the years 1830 and 1831, together with the disbursements of my office for those years. It has been impossible for me to complete the examination necessary to a correct compliance with the request contained in the resolution referred to, so as to enable me to report at an earlier day.

Cash received, fees for services during the years 1830 and 1831,	\$5,027 07
Disbursements for the same years,.....	2,550 41
Balance,.....	<u>\$2,476 66</u>

In the progress of my examination, I noted the fees of this office for searches and satisfaction pieces for those years. The cash received for those services, is included, and forms a portion of the above sum of \$5,027.07.

The result follows :

1830.	For searches, fees charged, \$500.07½ ; cash received,	
	\$321.84½ ; total, .....	\$821 92
1831.	For searches, fees charged \$481.04 ; cash re-	
	ceived, \$331.66½ ; total, .....	813 70½
1830.	Satisfaction pieces ; 271 at 66 cents each, .....	178 86
1831.	" 335 " .....	221 10

[A. No. 267.]

In addition to the requirements of the resolution, I have prepared an estimate of the fees of this office for four months. In doing this, I have selected a period which embraces all the temporary fluctuations of the business of the office. The period selected, being November and December 1831, and January and February 1832, includes two special terms immediately succeeding a general term, the whole of January term and a part of October term 1831. As there are only four of each of these terms during the year, it will be perceived that the increase beyond the ordinary monthly business of the office, growing out of the second of each of those terms, is fairly distributable through the whole year, in forming a general estimate. The difference may be seen in the following items: In November, 137 writs were returned, in December, only 24; at the special term in November, the number of papers filed exceeded by 188, those filed at the two special terms in December. The same ratio would probably prevail in all the other business of the office. The whole fees for November, exceed those for December \$120.40, which I consider as having been produced by the second of each of those terms. But as I have in my estimate for four months, included one full general term and one special term succeeding it, I deduct the portion belonging to those four months (\$40.03,) being one-third of the above excess.

Again; my estimate includes a term held at this place, there being only two held at Albany during the year, and the remaining two held abroad. As nearly as I can judge, the business of the term where the court is held, is increased above the ordinary term business, in notes of issue, entry of rules, &c. not far from \$200. Two of these terms being held abroad, it would leave \$400 to be deducted from an estimate for the year, or one-third (\$133.33) to be deducted from the four months estimated.

The resolution also asks a statement of the losses connected with the office. A reply must be rather conjectural. From the consideration that the charges are distributed through all the counties of the State, in small sums, the loss and expense of collection must necessarily be very great. I have always supposed, and my experience, and the opinion of others, have confirmed the supposition, that they will amount to one-third of the charges.

From April 1810, to April 1821, the State received the fees for services rendered in the several clerk's offices. In March, 1826, the Comptroller reported a balance of fees remaining unpaid, of

\$20,099.24. This balance remained, notwithstanding the superior facilities for collection which the State possessed, through the medium of county and other officers.

The result of my estimate will be found in the following summary, taken from the accompanying statement.

Balance of charges for four months estimated at....	\$841 30½
Cash received for fees in Nov. 1831,....	\$ 85 67
“ Dec. ....	31 37½
“ Jan. and Feb. 1832,....	177 04
	<hr/>
	294 08½
	<hr/>
	\$1,135 39
Disbursements of office,.....	425 07
Balance for four months,.....	710 32
Amount for one year,.....	2,130 96

I am, very respectfully,  
Your ob't serv't,  
JNO. KEYES PAIGE.

Albany, 22d March, 1832.





## A STATEMENT

*Of the fees of the Clerk of the Supreme Court, at Albany, made in obedience to a resolution of the Assembly, of the 8th day of February last.*

Of the amount of fees charged in this office, in the years 1830 and 1831, received only .....	\$2,664 02
Cash rec'd for fees in 1830 and 1831, and not charged,	2,363 05
	<hr/>
Total cash rec'd for fees in the years 1830 and 1831,..	\$5,027 07
Disbursements for clerk hire in these years, \$2,550 41	
Balance,.....	2,476 66
	<hr/>
	\$5,027 07

*An estimate of the proceeds of this office for the months of November and December 1831, and the months of January and February 1832.*

Fees charged in Nov. 1831,..	\$304 60½		
Estimat'd excess produced by including 2 gen'l & sp'l terms,..	40 03		
	<hr/>	\$264 57½	
Estimated loss and expense of collection,.....		88 19	
		<hr/>	\$176 38½
Fees charged in Dec. 1831,...	238 80		
Estimated loss and expense of collection,.....	79 60		
	<hr/>		159 20
Fees charged in Jan. and Feb. 1832,.....	891 91		
Estimated excess, on account of two terms held abroad,.....	133 33		
	<hr/>	758 58	
Estimated loss and expense of collection,.....		252 86	
		<hr/>	505 72
Balance of charges for four months,.....			841 30½
Cash rec'd for fees in November, 1831,	\$ 85 67		
“ December, “	31 37½		
“ Jan. & Feb. 1832,	177 04		
	<hr/>		294 08½
			<hr/>
Disbursements of office for four month,.....		\$1,135 39	
		425 07	
		<hr/>	
Balance for four months,.....		710 32	
		<hr/>	
Amount for one year,.....		\$2,130 96	

JNO. KEYES PAIGE.

*Albany, 22d March, 1832.*



**No. 268.**

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**IN ASSEMBLY,**

**March 27, 1832.**

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**REPORT**

**Of the select committee, on the petition of inhabitants of the village of Syracuse.**

Mr. M. W. Bennett, from the select committee to whom was referred the petition of sundry inhabitants of the village of Syracuse, in relation to school district number four,

**REPORTED :**

That the petitioners represent that school district number four includes the whole village of Syracuse, and contains nearly six hundred children between the ages of five and fifteen years : That it has now become absolutely necessary for the said district to incur great expense in the purchase of sites for school-houses ; and for the erection of such buildings, either *separately*, or in the erection of *one* large building upon the lot now owned by the said district, and which is conveniently situated to accommodate the whole village.

The petitioners further represent, that suitable and convenient sites would be not only very expensive and difficult to be procured, but that the schools would be of a much lower character, than if there was but one large building of suitable size and apartments, and under the care of a proper board of trustees.

Your committee are of opinion that the district system, (as it at present exists,) can be well adapted (in this case,) to the government of a school of a much higher grade than common schools generally.

Your committee are, for the reasons above stated, of the opinion that the prayer of the petitioners ought to be granted ; and have prepared a bill in accordance with the same, which they now ask leave to introduce.



**No. 269.**

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**IN ASSEMBLY,**

**March 28, 1832.**

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**COMMUNICATION**

**From Thomas H. Hubbard, Clerk of the Supreme Court.**

**SUPREME COURT CLERK'S OFFICE, }  
Utica, March 19th, 1832. }**

**To the Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.***

**SIR,**

In obedience to a resolution of the House of Assembly, passed Feb. 8th, 1832, I have the honor respectfully to

**REPORT :**

That on a careful examination of my books of account, it appears that the fees which accrued on all the business of this office, excepting for searches for judgments, and entering satisfaction pieces, for the year 1830, amount, as charged, to the sum of \$4,510.47 ; that the fees for searches are charged at \$1,407.64, and for satisfaction pieces entered, \$290.40, making the total amount of fees charged for that year, \$6,208.51 ; of which amount there has been received and collected in all, up to this time, the sum of \$3,312.70.

That the fees of the office in 1831, with the same exceptions as above stated, amount as charged, to \$3,208.11; for searches, \$1,771.24, and for satisfaction pieces entered, \$300.30 ; in all, \$5,279.65, of which there has been received in all, up to the present time, the sum of \$1,198.97.

The comparatively large amount charged for making searches and entering satisfactions of judgments, during these two years, has been

owing to the circumstance of the establishment of agencies in the western part of the State by the New-York Trust company, and other capitalists, for the loaning of money. To perfect the securities for the loans, the agents have been obliged to make extensive searches for incumbrances, and to procure the satisfaction of a large number of judgments, which has swelled the charges for these two items beyond any former example, and the business having entirely, or nearly ceased, the charges for those particular services will in future be reduced to the former standard, which, from an examination of my books previous to the year 1830, appears on an average to be about the sum of \$440 per annum ; indeed the decrease of the services of that description within the last two or three months, has proved that the latter amount should be calculated as about the fair average.

Having never kept any account of the disbursements of my office, it is not in my power to state with accuracy the amount of expenses ; but from the best examination which I have been enabled to make, the total amount, including the salaries of my clerks, is not less than \$1,100. In connection with the subject of disbursements, it may not be improper to state, that out of the receipts of the year 1830, I paid \$192.82 for commissions and charges of collection ; making the actual receipts of the office for that year, deducting expenses, \$2,019.88.

It will be seen that the receipts on accounts which accrued in 1831, (\$1,198.97,) have been but little beyond the expenses of the office.

From the preceding statement, it appears, that excepting the charges for searches which were considerably more in 1831, than in 1830 ; the aggregate business of this office has much diminished during the past year, and my books show that it is still diminishing.

In confirmation of this remark, I beg leave to state the result of an examination of my accounts for the last two months, as this period embraces the business of one term of the court, it probably presents a fair average of the legal charges for the years to come. In the month of January, my charges appear to have been \$460.16, and in February \$223.75 ; calculating the business of the year by this data, and allowing for each month in which a term is held, the amount charged in January, and for each of the other months, a sum equal to that charged in February, the amount to be charged for the entire year will be \$3,630.64, leaving the nett amount after deducting

expenses, (providing the whole should be paid,) not far from \$2,500. As the business of the present month thus far has been considerably less than the last, I believe this to be a large calculation, and I am satisfied that the actual value of the proceeds of the office, taking probable losses into consideration, will be much less than the balance above stated, and probably will not exceed \$2,000.

In regard to the losses connected with the office, it is difficult to speak with precision. On examination, I find that I have opened 1,528 separate accounts, a great proportion of which are, necessarily, for small sums, from fractions of a dollar upwards, and against gentlemen, (many of whom know nothing of their existence) living so remote from me, and in such dispersed situations, that I have hitherto been deterred from all attempts to collect them, though the aggregate amount of these small charges forms the most considerable portion of accounts still unliquidated. If the experience of past years forms a just criterion of the future, I think myself warranted in the belief, that far the greater portion of my accounts now on book, and unpaid, will probably never be realized. It may be proper to add, that I have occasionally received small amounts for services rendered, which do not appear on book, but I have kept no account of such receipts, and have no means of ascertaining the amount; the sums so received, however, have been very inconsiderable, and would not materially vary the results above stated.

I am, with great respect,

Your most ob't serv't,

T. H. HUBBARD.





**No. 270.**

**IN ASSEMBLY,**

**March 28, 1832.**

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**COMMUNICATION**

**Of Wm. M. Oliver, Clerk of the Supreme Court at Geneva.**

To the Hon. **CHARLES L. LIVINGSTON,**  
*Speaker of the Assembly.*

**SIR—**

In obedience to a resolution of the Assembly of February last, I herewith transmit a full statement of all legal fees charged or received by me, as Clerk of the supreme court at Geneva, during the years 1830 and 1831, together with the expenses of my office.

Amount of fees charged and receipts, in 1830,.....	\$3,083 56
Amount of receipts,.....	818 69
	<hr/>
	\$3,264 87

Amount of disbursements for clerk hire and expenses of office, 1830, .....	\$738 00
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**1831.**

Amount of charges and receipts,.....	\$2,565 68
Amount of disbursements for the year 1831,.....	688 00
	<hr/>
	\$1,877 68

Amount of receipts in 1831,.....	\$716 47
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I am unable to give a statement or form an opinion of the losses that may take place in the expense and collection of the above balance; that there will be considerable expense, and some losses will be manifest to every one who knows any thing of the trouble and difficulty of collecting small sums due in various parts of the State.

**WM. M. OLIVER.**

*March 14, 1832.*

[A. No. 270.]



**No. 271.**

**IN ASSEMBLY,**

**March 26, 1832.**

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**REPORT**

**Of the Trustees of Union College, for the year 1831.**

**SIR—**

**We have the honor to present to the Assembly the annual report of the Trustees of Union College.**

**H. YATES, Clerk.**

**To the Hon. CHARLES L. LIVINGSTON,  
*Speaker of the Assembly.***

**[A. No. 271.]**

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT ON THE PROGRESS OF WORK

FOR THE YEAR 1954

# **REPORT, &c.**

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*To the Honorable the Legislature of the State of New-York.*

The Board of Trustees of Union College, respectfully report to the honorable the Legislature of the State of New-York,

That the present Faculty consists of the following officers, viz :

**ELIPHALET NOTT, *President.***

**ROBERT PROUDFIT, *Professor of the Greek and Latin Languages.***

**ALONZO POTTER,           do   *of Rhetoric and Moral Philosophy.***

**BENJAMIN F. JOSLIN,   do   *of Nat. Phil. and Mathematics.***

**JOHN A. YATES,           do   *of Oriental Literature.***

**ISAAC W. JACKSON, *Adjunct Prof. of Mathematics.***

**THOMAS REED, *Adj. Prof. of Political Economy and Moral Phil.***

**CHESTER AVERILL, *Assistant Professor.***

**SILAS TOTTEN, *Tutor.***

That seventy-six young gentlemen were admitted to the degree of Bachelor of Arts, at the last annual commencement. That the whole number of students for the current year has been two hundred and twenty-three.

That the annual expense of a student in the institution, including books, is about one hundred and twelve dollars.

The terms of admission, and the course of studies afterwards pursued, will appear from the printed statement accompanying this report.

That the Classical Library for the use of students is continued, from which indigent students receive their books gratis. And that forty-one young men have been otherwise assisted during the past year from the funds granted by the State for that purpose.

The thirty-five thousand dollars appropriated to the permanent support of officers, the five thousand dollars for establishing a Clas-

sical Library, and the five thousand dollars for aiding indigent youth, arising from the lotteries heretofore granted to Union College, have been and continue invested according to law ; which investiture constitutes a permanent fund, amounting to forty-five thousand dollars.

They have only to add, that during the past year the students of the institution have generally prosecuted their studies in a satisfactory manner, and have been exemplary in their conduct.

HENRY YATES, *Clerk.*

*January 31, 1832.*

..... Ware.  
..... Legendre.†

**THIS YEAR.**

• r Kent.  
Criticism, Chemistry, Botany and Mine.

d Oratory—Natural Philosophy.

translation.





## Information.

### *Character.*

Candidates are required to furnish evidence of their good moral character, and if from another college, a regular dismissal or letter of request.

### *Age.*

Sixteen years of age are requisite to admission: the candidate enters, however, any class for which he is qualified.

### *Payment.*

There are three terms of study in each year, and the expense of each is paid in advance. Students unless from another college, entering the Sophomore class, pay \$7.00; the Junior \$9.00; and the Senior \$12.00, which is the only retrospective expense incurred by entering in advance.

### *Guardian.*

All moneys intended for the use of students are required to be transmitted to the College Register, who acts as fiscal guardian in their behalf, and transmits to each parent at the end of every term, a detailed account.

### *Annual Expense.*

College bills, including board in the Hall,.....	\$98 00
Fuel and light,.....	8 50
Washing,.....	6 00
Total,.....	<hr/> \$112 50

Students boarding out of the Hall, and students remaining in vacation, incur an additional expense for board.

The expense for clothing and pocket money, will vary according to the economy of individuals. A student who remains in vacation, may, with *strict* economy, clothe himself and pay all his other bills with less than \$200.00. A student not strictly economical, and who travels in vacation, will require from \$        to \$

## CHARITY STUDENTS.

### *Their Annual Expense.*

Board in the Hall, .....	\$36 00
--------------------------	---------

Wood and light, .....	6 00
Washing, .....	6 00
Total, .....	<hr/> \$48 00

### *Residence.*

Rooms are assigned the students in the same edifices that are occupied by the President and Professors, and their respective families.

### *Instruction.*

The Freshman Class, for the most part, constitutes a department in the Academy, and is taught by the principal thereof. The other three classes are divided into Sections, according to attainment, or choice of the studies, and the several Sections are instructed by the President and Professors.

### *Government.*

The government is, for the most part, parental and preventive, and devolves on the President and resident Professors. Those students who do not cheerfully submit to it, are silently dismissed. No student is allowed to visit taverns or groceries; to be out of his room at night or to go out of town at any time, without permission; nor is any society allowed to hold its meetings at night.

### *Exercise.*

Gymnastics and other athletic exercises are encouraged, and ample grounds are furnished free of expense, for those who prefer devoting their hours of recreation to agricultural pursuits.

### *Commencement.*

Commencement is on the 4th Wednesday in July; after which there is a vacation of six weeks.

### *Vacations.*

There are two other short vacations, the one sometime in December, the other in April. The Seniors have no additional vacations, nor are there any holydays. It is desirable that students should either return home, or visit their friends during the vacations. And when parents can not provide for this, the faculty should be apprised of it, that provision be made for their instruction and government at college.

### *Merit Roll.*

An accurate and daily account of the delinquencies of every student, and also of the degree of his attainment, in conduct, scholarship and attendance, is kept, and the summing up of these items de-

termines the place of each upon the Merit Roll; a copy of which items is transmitted to the parent.

*Examinations.*

A committee is annually appointed, who examine the several classes publicly, at the close of each term, and make a written report thereof.



**IN ASSEMBLY,**

**March 31, 1832.**

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**REMONSTRANCE**

**Of Doctors T. R. Beck and James McNaughton,  
against any alteration in the medical law.**

*To the Honorable the Legislature of the State of New-York,  
in Senate and Assembly convened :*

The memorial of the undersigned,

**RESPECTFULLY SHEWETH :**

That they have noticed with equal surprise and regret, an illiberal attack made upon them, in a remonstrance from sundry physicians in the city of New-York, presented to the honorable the Assembly. (Assembly Documents, No. 261.) The charges contained in this extraordinary paper, are so injurious, and at the same time so unfounded, as it respects the State Medical Society, that a prompt refutation is imperiously required.

The prominent charge against the State Medical Society is, that it is opposed to any improvement in the mode of examination, and particularly to that supposed change offered by the Medical Society of the county of New-York. The reply to this is simple, and we trust satisfactory. The delegate from that county was asked on the floor of the State Medical Society, whether this was one of the alterations prayed for in the *not to be seen* petition of the society.— He denied that it was. It was then urged that the society was establishing lectureships, and that it intended to apply for the power of granting degrees. This also was denied. This statement was made openly before the members of the society, and can be verified, if it be required, under oath. Indeed, no communication from the County Medical Society of New-York, was laid before the State Medical

Society, during its whole session ; nor has the secretary received any communications from it during the year 1831.

The remonstrance states that a circular has been addressed to various colleges and societies, and that a perusal of this would have informed the "comitia minora" of the wishes of the society. A copy of this circular is herewith annexed, by which your honorable body can appreciate the truth of this charge. The circular proposes to alter examinations *from oral to written* questions and answers, in public, and nothing more. The bill introduced by Mr. Milledoler, and for which the remonstrants pray, alters the whole form of examination ; appoints a new board, and confers additional privileges.

On the slanders offered in this remonstrance against the State Medical Society as being under the influence of persons attached to the Medical Colleges, the undersigned will barely remark, that they are as ridiculous as they are unfounded. The colleges have no favors to grant to gentlemen established in the practice of their profession. The members of the State Medical Society are far too independent, indeed we may add, too jealous of such influence, to allow themselves to be swayed by it. The present bill now before the Assembly, goes to alter the internal police of county medical societies, and the members of the State Society are certainly justified in expressing an opinion, and a decisive one, on a subject that particularly interests themselves. They are opposed, as far as the knowledge of your memorialists extends, to the proposed *written* mode of examination. They are impressed with the belief that it must, in a very short time, lead to collusion and the most disgraceful deception. In whose safe-keeping are these questions to be preserved, so that the prying eye of a student shall not find them ? What is to prevent them from being copied and studied ? And thus, instead of pursuing the whole range of medical science, the student will be poring over a miserable catechism or epitome of stock questions.

Of those individuals who, in the present remonstrance, are defaming the State Medical Society, there are some who owe much of their present standing to the honors which it has bestowed on them. One individual, who has been in attendance in this city, soliciting for the alteration *originally* proposed by the County Medical Society, has confessed that the remonstrance was signed by him without knowing what the State Medical Society had done, and that he owed an apology for his signature.

In conclusion, the undersigned would beg leave to characterise the present bill, as well as substitute, now before the honorable the Assembly, as in their solemn opinion, an act to establish a monopoly of the most odious and oppressive nature, in the Medical Society of the county of New-York; a monopoly too, calculated to injure the cause of medical science, and to render the proposed office of examiner a mere office for money making. Exorbitant fees are proposed to go into the pockets of these examiners, when in the colleges which they so much detest, not a cent is received from the graduation fees, by the professors.

To erect a solitary medical society, (one out of forty or more in the State,) into a virtual medical college, without any check but the changing passions of a large number of practitioners, many of them just commencing their profession, is certainly giving and granting powers before unheard of in the United States. And it speaks but little for the discretion of these junior practitioners, that they are thus attacking the present mode of examination. Do they speak from experience, when they assert that it is too lax, and unfaithful and partial? If so, they seem but little aware how small a compliment they are paying to themselves in thus bringing before the public their own medical character.

**T. ROMEYN BECK, M. D.**

**JAMES M'NAUGHTON, M. D.**

*Professors College of Physicians and Surgeons  
Western District.*





**(CIRCULAR.)**

***To the Medical Societies, Faculties, and Colleges in the United States.\****

The Medical Society of the city and county of New-York, have appointed the undersigned a committee to correspond with the different faculties and societies of medicine in the United States, on the subject of examinations for license to practice physic and surgery.

The committee, in obedience to their instructions, beg leave respectively to suggest the following propositions, viz :

1. Public safety and the true honor of the medical profession demand that diplomas granted as licenses should be good vouchers for the possession of plenary knowledge :

2. Diplomas, to be good vouchers, must be granted on plenary and impartial examinations ; and, to be universally accredited as such, they should be granted on examinations which have been so conducted, as to preclude all possibility of corruption ; wherefore,

3. A rule touching the method of examining should be established by law and custom, which should awaken all self-respect in the examiner, and assure the candidate and the public of the open justice of the trial :

4. The Society of New-York are of opinion, that these objects would be accomplished by the following *rule*, which they have adopted :—“ *The questions and answers of the examination to be recorded, verbatim, in a book appropriated to such use ; and (to secure the purity of the record) the examination to be conducted entirely in public,*”

5. It is thought that the oblique influences of pupilage, consanguinity, medical politics, &c. will be entirely counteracted by the adoption of such a rule : that students will be careful to qualify themselves for their very responsible calling, by increased devotion to the essential departments of medicine and surgery—the clinical and operative ; that being better qualified, and being perfectly assured of a fair, honorable, and practical examination, the candidate will have less of that undefined dread of the final trial, which so much depresses him during the whole course of his studies ; and that the whole profession will rapidly rise in public estimation.

6. To the rule it may be objected that the examinations will very soon assume a tautology of form ; but the committee are of opinion that the board of examiners will be urged quite in a contrary course, by the presence of their peers in the profession, and by the presumption that their records will meet subsequent inspection and comparison ; and to fortify this check, the committee propose, that the board of censors write their respective votes at the foot of each record of examination.

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\* It is hoped that the individual members of the profession, and literary gentlemen not connected with the profession, throughout our country, will take a deep interest in the success of this undertaking.

The committee regard a uniformity of usage in examinations, as a very great desideratum ; and they respectfully solicit an early reply to this communication, in the hope of being able to lay before the society a fair prospect of its speedy accomplishment.

JOHN F. GRAY, M. D.  
DANIEL L. M. PEIXOTTO, M. D.  
H. B. GRAM, M. D.  
WM. JAMES MACNEVEN, M. D.  
FELIX PASCALIS, M. D.

*New-York, Oct. 22d, 1831.*

**IN ASSEMBLY,**

**March 12, 1832.**

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**REPORT**

**Of the committee on towns and counties, on the petition of sundry inhabitants of the town of Brighton in the county of Monroe.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the town of Brighton in the county of Monroe,**

**REPORTED :**

**That they have had the same under consideration, together with a remonstrance on the same subject ; and it appearing that the division sought for is in no wise equitable, as the new town will not contain more than one-sixth of the population, and an unproductive region of country. This, together with the fact that there is neither survey, maps, nor notices of such intended division accompanying the petition, your committee have unanimously recommended the following resolution :**

***Resolved,* That the petitioners have leave to withdraw their petition.**



**No. 274.**

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**IN ASSEMBLY,**

**March 12, 1832.**

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**REPORT**

**Of the select committee, relative to the procuring of curtains for the windows of the Assembly chamber.**

Mr. Van Duzer, from the select committee appointed by the Honorable the Assembly, to inquire into the expediency and expense of providing suitable curtains or blinds to the windows of the Assembly chamber, for the protection of its furniture,

**REPORTED:**

That they have had the same under consideration, and have no hesitation in recommending that some measures should be adopted to exclude the effects of the sun shining upon the furniture of the chamber, exposed as it is by the position of the Capitol and the size of the windows. The committee are also of the opinion that transparent curtains are best adapted to secure the object desired; the size of the west windows rendering blinds corresponding with the rest of the furniture, altogether inadvisable.

The committee have conferred with Mr. Barnett of New-York, the gentleman employed by the Honorable the Senate to supply the windows of the Senate chamber with articles of that description. Mr. Barnett will agree to supply and put up complete, with the necessary and proper machinery, curtains of the quality of the samples exhibited, covering the whole of the four large windows, and the two small lower windows next to the southwest corner of the chamber, with such devices as may be directed, for the sum of two hundred dollars. The committee believe, from the information possessed by them, that the price proposed is as reasonable as the articles can be obtained.

The committee deem it unnecessary to comment upon the fact, which must be obvious to every member of the House, that the curtains proposed will conduce much to the comfort of the chamber. They have therefore directed their chairman to offer the following resolution :

*Resolved*, That the clerk of this House be instructed to procure and supply transparent curtains, of the quality corresponding with those to be supplied for the Senate chamber, for the four large windows, and the two lower small windows next to the northwest corner of the Assembly chamber ; provided the expense of the same, including all necessary machinery and hanging the same, shall not exceed two hundred dollars ; and that he pay for the same out of the contingent fund of the Assembly.

**No. 275.**

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**IN ASSEMBLY,**

**March 12, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of South-Middletown.**

**Mr. Van Duzer, from the select committee to whom was referred the petition of sundry inhabitants of South-Middletown, for the incorporation of a fire engine company in Orange county,**

**REPORTED:**

**That they have had the same under consideration. That it appears from the petition, that the village of Middletown in the town of Walkill in the county of Orange, is of considerable magnitude in point of population. Its buildings, composed chiefly of wood, are so situated, that if fire should be communicated to almost any part of said village, destruction to a large portion of it must be the inevitable consequence. The committee have therefore directed their chairman to ask leave to introduce a bill.**





**DOCUMENTS**  
**OF THE**  
**ASSEMBLY**  
**OF THE**  
**STATE OF NEW-YORK,**  
**FIFTY-FIFTH SESSION,**  
**1832.**

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**VOLUME IV.**  
**FROM No. 276 TO 338 INCLUSIVE.**

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**ALBANY:**  
**PRINTED BY E. CROSWELL, PRINTER TO THE STATE.**

.....  
**1832**

*Dup*  
*E.C.*



**No. 276.**

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**IN ASSEMBLY,**

**March 12, 1832.**

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**REPORT**

**Of the committee on the judiciary, on the petition of  
sundry inhabitants of Long Island.**

Mr. Otis, from the committee on the judiciary, to whom was referred the petition of sundry inhabitants of Long Island, for an alteration in the Revised Statutes, relative to coroners and sheriffs acting as wreck-masters on said island,

**REPORTED:**

That the petitioners, who are themselves chiefly wreck-masters of the county of Queens, seem to doubt whether the Legislature intended to give to sheriffs and coroners the powers of wreck-masters, by title twelfth of chapter twentieth of the first part of the Revised Statutes. That, by the Revised Statutes, sheriffs and coroners have the power of wreck-masters, cannot admit of a doubt. The language of the law in this respect is clear and explicit; and it is well known that anciently, sheriffs and coroners, *virtute officii*, were wreck-masters. The petitioners ask that this law may be repealed, in order that those who are appointed wreck-masters may have the exclusive care of wrecks. Your committee do not perceive any good reason why this request should be granted. The sheriff and coroners are always presumed to be good and responsible citizens, and there can be no impropriety whatever in such persons having such authority. Your committee have therefore directed their chairman to offer the following resolution:

**Resolved,** That the petitioners have leave to withdraw their petition.



**IN ASSEMBLY,**

**March 31, 1832.**

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**REPORT**

**Of the select committee, on the petition of Jeremiah Bradway, for an act authorising him to continue a ferry across the Schoharie creek.**

**Mr. Crookshank, from the select committee, to whom was referred the petition of Jeremiah Bradway, praying for an extension of the law authorising a ferry to be kept across the Schoharie creek, in the town of Schoharie,**

**REPORTED :**

**That it appears that an act was passed on the eighth day of February, 1823, authorising Robert Knox, Schuyler Briggs and John P. Griggs, and their assigns, to keep and maintain a ferry across the Schoharie river, in the town of Schoharie ; that the persons above named, about five years ago, sold and assigned their interest in the ferry, to Jeremiah Bradway, who has ever since continued to manage the said ferry. The grant for the above ferry will expire in about one year.**

**The ferry established by the act of 1823, is on the mail route from Catskill to Canajoharie, and is highly important, not only as it regards the mail, but is important to a large district of country around it.**

**The Schoharie river is a stream of considerable magnitude, and often of a violent character. The scow or ferry boat, as well as the other apparatus connected with it, are required to be strong, and necessarily expensive.**

**Mr. Bradway represents that the old ferry boat is nearly worn out ; that it is necessary immediately to construct another boat, but**  
**[A. No. 277.]**

inasmuch as the act establishing this ferry has but one year more to run, he does not think it safe or prudent to go to the expense of constructing a new boat, unless the act establishing this ferry be extended.

Against the petition for extending the act of 1823, the committee have received a remonstrance : the spirit of this remonstrance, however, appears to be directed mostly against some of the provisions of the act of 1823. The committee, in drawing a bill have endeavored to guard against these obnoxious provisions of the act complained of.

The committee, after a full examination, have come to the conclusion that the public good requires the continuation of this ferry, and have prepared a bill, which they ask leave to introduce.

**No. 278.**

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**IN ASSEMBLY,**

**March 31, 1832.**

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**REPORT**

**Of the committee on Indian affairs, on the petition  
of Daniel Bread.**

Mr. Ross, from the committee on Indian affairs, to whom was referred the petition of Daniel Bread, an Oneida Indian, praying for payment for his improvements of about sixty acres on lot No. 25 in the Two-mile tract, so called, situate in the town of Vernon in the county of Oneida,

**REPORTED :**

That it appears to your committee from the statement of the petitioner, that a treaty was entered into with the First Christian Party of the Oneida Indians, the 26th day of August, one thousand eight hundred and twenty-four; and in the provisions of said treaty, it became the duty of the Commissioners of the Land-Office to cause an appraisement to be made on the improvements on the land ceded by the said treaty with the Oneida Indians, and the person administering the government of this State; and the payment for said improvements to be made according to the stipulations of said treaty. And the petitioner further states, that the improvements on about sixty acres on said lot No. 25 have not been paid for, in consequence of its being then in the possession of one Erastus Willard, under a lease of five years. From the statement of the petitioner, and other evidence accompanying the same, and also a statement of the Surveyor-General, that the improvements on said sixty acres of land on lot No. 25 in the Two-mile tract, have not been paid for, your committee have come to the same conclusion, and therefore think that the prayer of the petitioner ought to be granted, and ask leave to introduce a bill accordingly.





**No. 279.**

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**IN ASSEMBLY,**

**March 31, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the county of Kings, to extend the time for the collection of taxes in said county.**

**The select committee, to whom was referred the petition of sundry inhabitants of the county of Kings, praying for the passage of a law extending the time for the collection and making returns of taxes in said county,**

**REPORT:**

**The petitioners represent that the collectors of the several towns in said county have been unable to collect and make returns of taxes, within the time now allowed by law. That the largest portion of the taxes of said county are collected in the village of Brooklyn; and that difficulties of a peculiar nature exist to embarrass the collection. Among these are the vast number of owners to property in that village, the large proportion of non-resident owners, and the fact that property is so minutely divided and so frequently changes owners, that it is impossible to ascertain, in many instances, upon whom to call for the taxes until the time allowed has expired. The petitioners further represent, that the first day of November is one of the usual quarter days for the payment of rent, and that taxes can be more easily paid, by the owners of property, during that month than either of the months at present allowed for that purpose.**

**Your committee, from a view of the facts, are of opinion that the prayer of the petitioners ought to be granted, and accordingly ask leave to introduce a bill.**



**IN ASSEMBLY,**

**April 3, 1832.**

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**MEMORIAL**

**Of the dealers, shippers and consumers of pressed hay in the city of New-York, praying for a law regulating the inspection thereof in said city.**

*To the Honorable the Legislature of the State of New-York.*

**The memorial of the dealers in, shippers and consumers of pressed hay in the city of New-York,**

**RESPECTFULLY REPRESENTS :**

**That the *frauds* long practised, by those engaged in the pressing of hay for the New-York market, and the great extent to which they have been lately carried, compel your memorialists, in justice to themselves, and in behalf of a defrauded community, to present the subject to your honorable body, and pray its interposition.**

**Your memorialists complain,**

**1st. That most, if not every bundle of pressed hay, brought to, and sold in this market, amounting to fifty or sixty thousand annually, falls short of the marked weight, from 15 to 50 pounds ; and in some instances, seventy-five :**

**2d. A great portion of it is watered in pressing, to such an extent as to injure, mould and rot the centre of the bundle ; and thereby render the whole or a great part thereof entirely valueless :**

**3d. Foul grass, weeds, damaged hay, litterings, and almost every other material that will increase the bulk is thrown, by the presser, into the centre of the bundle, and carefully surrounded by, and covered with good hay ; thus concealing its real quality, imposing upon the purchaser and shipper, and defrauding the consumer :**

4th. The boards and hoops enclosing the bundles are, in many, if not most cases, thicker, wider and heavier than necessary; weighing not unfrequently from 20 to 35 pounds: by which the weight of the hay is proportionably diminished.

Every dealer, and almost every consumer of the article is well aware of the existence of these frauds. And they are generally known to have materially increased within the last few years. And your memorialists are not aware of any means by which they can now detect them, or escape the injury produced and intended by them, except by tearing the bundles to pieces, and thus exposing every part to inspection, an inconvenience and expense they would gladly avoid; to say nothing of the destructive effect such a course must necessarily have upon this branch of the hay trade.

And satisfied as they are that a remedy for the evil of which they complain can only be obtained through legislative enactment on the subject, they therefore pray your honorable body to pass a law, with such provisions and restrictions as may be advisable, subjecting all pressed hay sold or offered for sale in this market to inspection, both as to weight and quality; and that an *Inspector*, under such law, may be appointed, in such manner as may be thought meet and proper, whose duty it shall be to inspect the same.

Your memorialists would further represent, that the attention of the common council of this city was, by a memorial presented to them during the past summer, called to this subject; but your memorialists are informed that nothing has been done by that honorable body in the premises, on account of a want of power or authority legally to interfere, and afford the necessary relief. They are advised, therefore, that they are remediless, except by legislative action on the subject by your honorable body.

*Dated March 20th, 1832.*

Asa Hall,  
H. Van Dewater,  
John Patten,  
Nathan Dunn,  
T. D. Lewis,  
Prewier Wertendyke,  
C. Grannis,  
Stephen Hartwell,

John Hogenkamp,  
John Blauvelt,  
Henry Traphagen,  
Jacob Shute,  
Wm. Wyllys Pratt,  
Benja. Cooper,  
James T. Harding,  
Wm. McKinney,

**Jacob Post,  
Saml. Bent,  
Saml. S. Gray,  
Geo. Bowen,  
J. W. Watson,  
George Fradenburgh,  
Elliott F. Driggs,  
John Mathews,  
Jahn Odell,  
W. W. Creemer,  
Benedict Burwell,  
John Black,  
Morris K. White,  
Kipp & Brown,  
Andrew West,  
James S. Lamb,  
Green T. Powell,  
Reuben Smith,  
David K. Jessup,  
Isaac Tyler,  
Thomas C. Peck,  
John Goble,  
James Brundige,  
Wm. D. Traphagen,  
Isaac Buxton,  
John Ewing,  
J. W. Schultz,  
John Keyser,  
Hugh Goble,  
S. Stanford,  
E. Morgan,**

**Wm. L. Rowan,  
Nathan Brown,  
Abrm. Brown,  
Elias Arnold,  
Joseph B. Harriot,  
Saml. Griffen,  
B. W. Lyons,  
Isaac Underhill,  
Thomas Fitch,  
Jno. Y. Cebra,  
Isaac Amerman,  
A. B. Mack,  
Saml. K. Gaston,  
Jonathan Traphagen,  
Daniel S. Collier,  
Stephen Ryder,  
James McGahary,  
David King,  
Jedediah Cry,  
Jacob Charlich,  
Reuben Knapp,  
Oliver Jessup,  
Elijah H. Brown,  
Thos. Jeremiah,  
C. Harriot,  
George P. Weeks,  
Samuel Holden,  
Joseph Larness,  
William Hyatt,  
John Ross,  
D. B. Williams.**



**No. 281.**

**IN ASSEMBLY,**

**March 13, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on the  
petition of Wessel Ten Broeck.**

**Mr. Clark, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to whom was referred the petition of Wessel Ten Broeck, of the county of Otsego,**

**REPORTED :**

**That the petitioner represents that the Cayuga Turnpike Company was incorporated about the year 1804. That the directors of the company represented to him, and spoke of it with much assurance, that those who built the road, and took shares in the stock, would make a profitable investment. That upon these representations, he was induced to make one mile of the road. That after having completed this contract, the directors again importuned him to make an additional piece ; assuring him that the residue of the road would shortly be put under contract and completed. That he did make an additional piece ; on both of which he expended more than twelve hundred dollars, and that he has never received any compensation therefor. It would seem that but a small part of the road was ever made.**

**The petitioner further represents, that about twenty years since, the commissioners of highways of the town of Edmeston laid out a public highway on this part of the road which he had made, which was districted, worked, and is still used as such ; thereby appropriating his private property to public use, which he asserts was of great benefit to the State. He therefore claims twelve hundred dollars from the State, or such lesser sum as the Legislature shall deem just and equitable.**

Your committee have not been able to discover that the petitioner has any greater claim for remuneration from the State, than any other individual whose lands are appropriated for public highways ; nor are they satisfied that the State has been materially benefited by the construction of this piece of road. They therefore recommend the adoption of the following resolution :

*Resolved*, That the prayer of the petitioner ought not to be granted.



**IN ASSEMBLY,**

**March 13, 1832.**

---

**REPORT**

**Of the select committee, on the petition of the elders and trustees of the Associate Reformed Congregation of Neelytown.**

**Mr. Barker, from the select committee to which was referred the petition of the elders and trustees of the Associate Reformed Congregation of Neelytown, for a law changing the name of said congregation to the Associate Reformed Congregation of Hamptonburgh,**

**REPORTED :**

**That they have had the same under consideration. That it appears that said congregation have lately erected a new church in the central part of the town of Hamptonburgh, a new town, lately formed from portions of territory where more of the members of said corporation reside ; said territory formerly known as Neelytown. That the committee, deeming the prayer of the petitioners reasonable, have directed their chairman to ask leave to introduce a bill.**



**IN ASSEMBLY,**

**April 5, 1832.**

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**REPORT**

**Of the select committee, appointed under a resolution relative to the act to abolish imprisonment for debt.**

**Mr. Stilwell, from the select committee, appointed under a resolution of this House, to prepare and propose such amendments and forms as might be necessary to carry into effect more fully the act to abolish imprisonment for debt, and punish fraudulent debtors, passed April 26, 1831,**

**REPORTED :**

**The committee have carefully, and as they think, critically, examined the act of the last session, to which, by a resolution of this House, their attention has been called ; and they have been able to find but little which would, in their opinion, admit of alteration or amendment ; and, although they have determined to offer some new sections for consideration, yet they can not refrain from expressing their undiminished confidence in the various features of the act, and their entire belief in its wholesome and profitable provisions.**

**The additional sections which the committee now offer, are more the result of a sense of the importance of their connection with our civil code, exclusive of the act under consideration, than as a consequence produced by it. Nevertheless, as it will promote the general end for which laws relative to civil proceedings were enacted, they have deemed the provisions unexceptionable under this head.**

**By the Revised Statutes the justices of wards and the marine court, in the city of New-York, do not possess the power to issue attachments for the recovery of debts, and consequently can not prevent**

the transfer, removal or other disposition of property, until after judgment is rendered, and execution issued against the goods and chattels of the party.

In this particular, it will be perceived, the lower courts in the city of New-York do not possess the powers which are conferred upon justices of the peace in the country, and, in many instances, are unable to give relief or prevent the fraudulent disposition of property before judgment.

The act under consideration does not, in terms, confer the power upon the courts in New-York to issue attachments, in the same manner, and under the same circumstances, as is possessed by the justices of the peace, and yet the authority appears by implication : and a part of your committee are of opinion that the authority now proposed by the amended act is, to all intents and purposes, conferred by the act of last session. On this subject, however, much difficulty may arise, and being fully satisfied that the courts in New-York, of inferior jurisdiction should possess the power to issue attachments, in cases where by law the justices of the peace have that authority, they have deemed it advisable to propose a section, giving the authority in terms which can not be misconstrued.

The next question to which the attention of your committee was drawn, relates to the operation of the writ of execution against real property.

It will be recollected that executions by justices of the peace against property, for any sum not exceeding twenty-five dollars, exclusive of costs, do not create any lien or incumbrance on real estate ; and that, in consequence thereof, a creditor is not able to collect his demand from his debtor, notwithstanding he may be possessed of a large and valuable freehold estate, immediately within the operation of the process. This is an evil which it is not proper should remain, and, therefore, your committee have proposed, by the second section of the bill, a full and sufficient remedy, where no personal property can be found to satisfy the demands of the plaintiff.

The laws relative to the estates of insolvents have been and now are various, particularly as to assignees, and the distribution of the estates of debtors. It has been the opinion of many intelligent men that it is the right of a creditor to demand and receive his proportional share of the estate of his debtor ; and that no act, either of a

creditor or debtor, ought in equity, to deprive him who holds a demand from receiving his equal distributive share. On the other hand it is contended, that the maxim of law, that preference should be given to the vigilant, should always give to the creditor prosecuting his claim a preference over all others.

On this question your committee have bestowed more than ordinary attention, and after a close and careful examination, have been unable to discover in the vigilance, or whatever else the conduct of the creditor may be termed, any thing so meritorious as to entitle him to the especial favor of the law. Indeed, there is something abhorrent in the idea of giving a premium, or offering a bounty to him that shall evince the greatest willingness to involve his fellow in litigation, or bestow upon the man most importunate in his claims, the goods that of right may belong to his more quiet, and perhaps, not less deserving neighbor. It cannot be believed for a moment, that the spirit of our laws intend to make our citizens litigious. On the contrary, they are designed to infuse into society a disposition and inclination precisely the reverse.

The course to be encouraged among our people, is to render honesty and good character the passport to credit; to establish as a maxim, that men are to be trusted, not upon the ground that through the operation of our courts of justice, payment will be enforced, but that they should devote their property and their earnings to the satisfaction of their debts; and that a willingness to pursue this course, can be the only ground upon which to claim credit.

If we direct that the creditor, who first commences the suit, and pursues the same to judgment, shall, by so doing, obtain a lien upon the property of his debtor, to the exclusion of those who are more lenient, we think it would be a departure from a correct rule, and indeed, a violation of the rights of the more humane, and not less deserving creditor.

No doubt can be entertained that in point of justice and moral honesty, he who is forbearing, is as much entitled to protection, as he who is unrelenting and litigious; besides, the estate of an insolvent debtor would seem to be the joint property of the creditors; each should be considered as entitled to a distributive share, bearing an equal proportion to the amount which every other creditor may receive from the estate of the insolvent. Taken in this point of view,

it would be highly unjust to allow any person to wrest from another what is justly his own, because more vigilance or activity has been shown in enforcing the laws.

We have already exploded the idea that the person of the party possessed any valuable quality by which the claims of a creditor could be satisfied, and we now consider property as the only means to satisfy a pecuniary demand. There can be no way, however, by which we can dispense justice so even handed as by distributing the property at the time when the insolvency of the debtor shall be established. This is the period when the claims of every creditor can be correctly determined, and when the consideration upon which the debt was contracted can be fairly understood; each one may at this time exhibit and receive the amount of that equitable lien which every creditor must possess on the only thing which can repay him for his property credited.

Your committee deem it unnecessary to proceed further with the argument to shew the impropriety and injustice of making a distinction between creditors, and therefore refer for evidence of their views, to the third section of the bill prepared by them, which declares that assignees under the act referred to your committee, shall in all cases, make an equal distribution of the estate of an insolvent, among all the creditors, in proportion to the amount of their respective demands.

The fourth section of the bill provides, that the act under consideration shall not operate to prevent the service of the *capias ad respondendum*, provided bail is not required, and declares that the service now authorised shall not be deemed an arrest or imprisonment within the meaning of the act. Indeed the service of the *capias*, when no bail is required, has long since ceased to be an arrest.

And by the provisions of the Revised Statutes, if the defendant refuse to endorse his appearance on the writ, the sheriff is not authorised to touch his person, but to return the process with an endorsement thereon that it has been personally served.

In making the provision contained in the fourth section your committee have been governed by what they conceived the greater benefit, and a desire to make as few changes as possible in the existing practice.

Under the present law suits may be commenced by the original writ, the summons, and, therefore, it does not become imperiously necessary that this provision should be inserted in consequence of the act of last year.

Yet, your committee having taken into consideration the familiar use of the capias, and the entire disuse of the summons, have deemed it advisable to continue the capias ad respondendum after depriving it of its force against the person.

It was at first contemplated to confine the practice, where no bail could be required, to the declaration, but subsequently it was recollected that it might produce some difficulty, inasmuch as to make joint debtors liable by service of declaration, all the parties must be personally served, whereas by serving the capias on one the joint property of all becomes liable.

The fifth section repeals the last words in the last line of the second section of the act, and the fourth subdivision of the thirtieth section, which excepts from the operation of the act the remedy for injuries sustained by reason of professional misconduct. This exception was inserted in the act of last session out of an abundant caution, least cases might, by the nature of the action, arise, which in themselves were wrong, but which might be classed under the head of debts; and thereby, under the appearance of debt, persons would escape a just and merited punishment. The committee are fully satisfied that more difficulties would arise under the indefinite meaning of the word "profession," than evil result by repealing the reservation: and it will be recollected that, in all the cases enumerated under the words "professional misconduct," an action on the case would lie; and whenever that is brought the party would still remain liable under the old law.

After mature examination and reflection, your committee came to the conclusion that it would be best to repeal the clause, and leave the party to his action on the case as now authorised.

The sixth section confines the service of the warrant against fraudulent debtors to the sheriff. This was thought to be the suitable course, inasmuch as the process must always proceed from a court of record.

In the discharge of that part of the duty assigned to your committee, relating to the forms necessary to carry into effect the act of last

year, they have fortunately been favored with a pamphlet entitled, "Practical forms for proceedings under the act to abolish imprisonment for debt, and to punish fraudulent debtors," published by Morse & Harvey, and which, as it seems to your committee, has been prepared with much care and ability. In that work will be found all the forms necessary to answer every purpose contemplated by the reference to this part of the subject to the committee, and they therefore respectfully recommend the same as deserving of public confidence.

Your committee would have reported the result of their deliberations to the House before this time, had they not felt desirous of hearing from different sections of the State, whether any defects were found to exist in the law, which might need legislative remedies. They are, however, happy to say, that so far as their information extends, the greatest satisfaction is expressed, and an increased confidence is felt in consequence of the benefits that have already flowed from its operation.

Up to this time, few complaints have reached us, and being aware that the session is fast drawing to a close, your committee have thought it proper, without further delay, to present for the consideration of the House, such amendments or additional sections, as, in their opinion, require the action of the present Legislature.

Your committee cannot conclude this report without offering their congratulations to the House, on the auspicious change which we are now witnessing. This great State disenthralled from the bondage of custom, is now offering to her sisters of the Union, the first example of the triumph of reason and principle, over the tyranny of habit, by the establishment of a civil code on the basis of just and equal rights.

It should be generally known that New-York is the *first* and the *only* State which has declared for constitutional freedom. She is the only State in the Union that does not recognize *imprisonment for debt*, and she is the first to commence at the foundation to eradicate a custom, which, although it does not retain the name in several States in the Union, still does exist, and may be found in all. It may reasonably be hoped that the course pursued by this republic, may *prove*, in the lapse of a few years, the value of private character and individual freedom, and that a government sustained only by equal and just laws, will secure to the creditor as well as the debtor, the greatest possible amount of benefit.



We have reason to rejoice that this State has so successfully taken the lead in many important measures intimately connected with the prosperity of her citizens, and that the plans she has adopted have so uniformly proved prosperous.

Her institutions are gradually assuming the character and spirit of her people; the usages of past times are fast falling before the expanded views and correct principles which are found imprinted on the mind of every true friend to rational liberty; and as the improvement of her soil and the developing of her resources have rapidly increased her wealth, so the liberal and enlightened views of her legislators will soon show to the world a system of laws, perfected on the basis of correct principles, and holding up for example and emulation what has often been imagined but never attained, a government where virtue is encouraged and rewarded, and vice detected and punished; where, in truth, in every branch of legal science, as well as in the moral sense of the people, we shall be enabled to find in precept and example, that "honesty is the best policy."



**No. 284.**

**IN ASSEMBLY,**

**March 14, 1832.**

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**REPORT**

**Of the committee on towns and counties, on the petition of sundry inhabitants of the town of Fishkill in the county of Dutchess.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the town of Fishkill in the county of Dutchess,**

**REPORTED :**

**The population of the town is 8,292, and the territory is sufficiently large to warrant a division ; but it appearing to your committee that a large majority of the inhabitants is opposed to the contemplated division, and it also appearing that the petitioners have not in all respects complied with the Revised Statutes in relation to surveys, a majority of your committee have come to the conclusion to recommend the adoption of the following resolution :**

***Resolved,* That the petitioners have leave to withdraw their petition.**



**No. 285.**

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**IN ASSEMBLY,**

**April 4, 1832.**

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**REPORT**

**Of the select committee, on the petitions of inhabitants of the counties of Seneca and Ontario, for an act authorising them to form an association for holding fairs and establishing a race-course.**

**Mr. R. D. Dodge, from the select committee, to which was referred the petitions of freeholders and inhabitants of the counties of Seneca and Ontario, asking the passage of an act authorising them to form an association for holding fairs, and establishing a race-course,**

**REPORTED :**

**That the committee have attentively examined the said petitions, and believe that the facts therein set forth are generally correct :— that the establishment of a race course, connected with a fair or market, for the exhibition and sale of fine horses, under the control and direction of a society or association, to be formed for that purpose, would be highly beneficial to a large portion of the agriculturists of said counties, who now are or may be engaged in breeding this species of stock : that, so far as relates to those counties, the present law to prevent horse-racing, in all cases, is entirely disregarded : that races are run in many parts of said counties, during the season of racing, in the public highways, accompanied by gambling tables and other devices, to the prejudice of the interests and morals of the public.**

**The committee believe, that allowing the establishment of a regular race-course in one of said counties, under the control and management of a society or association to be formed for the purpose, who shall make proper rules and regulations, and submit them to the court of common pleas, to be by them sanctioned, would not only**

**[A. No. 285.]**

be beneficial to agriculturists, but would, if the necessary power were given to said association, effectually prevent racing in public highways, with the evils which necessarily follow such practices.

The committee have, therefore, prepared a bill, in conformity to the prayer of said petitions, and directed their chairman to ask leave to introduce the same.

**No. 286.**

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**IN ASSEMBLY,**

**April 5, 1832.**

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**NINTH ANNUAL REPORT**

**Of the board of managers of the Troy Savings Bank,  
for the year ending the 1st Monday of April, 1832.**

*To the Honorable the Legislature of the State of New-York.*

Pursuant to the provisions of the act, entitled "An act to incorporate the Troy Savings Bank," the board of managers

**REPORT:**

That from the first Monday of April last to the first Monday of April instant, there has been received from depositors in said bank the sum of \$59,031.71. And that, during that time there has been withdrawn from the bank, by depositors, the sum of \$27,789.16, including dividends paid; and \$320.25 have been paid for contingent expenses of the bank, in the same time. That there is now deposited to the credit of the said bank, in the Bank of Troy, the sum of \$71,522.88; and in the Farmer's Bank the sum of \$63,360.51; in the whole \$134,883.39, being the amount received by the Troy Savings Banks, since the commencement of the institution, and the interest which has accrued thereon, after deducting the amount refunded to depositors including dividends paid, and the amount paid for contingent expenses of the bank.

That the depositors in the said bank have received dividends, at the rate of 5 per cent per annum, excepting the dividend made the first Monday of October 1829, which was at the rate of 5½ per cent per annum. And that there is a surplus of interest, amounting to \$3,157.11, which is carried to the credit of the profit and loss account.

All which is respectfully submitted.

*Troy, April 2d, 1832.*

**J. L. LANE, Secretary.**

**[A. No. 286.]**

**R. P. HART, V. President.**





**No. 287.**

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**IN ASSEMBLY,**

**April 6, 1832.**

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**REPORT**

**Of the committee on the judiciary, on the bill entitled "An act relative to the oath of office of justices of the peace."**

Mr. Otis, from the committee on the judiciary, to whom was referred the bill entitled "An act relative to the oath of office of justices of the peace,"

**REPORTED:**

That the amendments made by the honorable the Senate to the bill, as passed by this House, are intended to relieve justices of the peace, who either have not taken the oath of office within the time prescribed by law, or have taken the oath before persons not authorised to administer the same.

Your committee have given a careful examination to the legal principles involved in these amendments, and regret to say their opinion is against them. By the Revised Statutes, vol. 1st, page 122, § 34, it is provided, among other things, that every office shall become vacant on the happening of the refusal or neglect of the officer elected or appointed to take the oath of office, within the time required by law. The direct and certain effect of this provision is totally to vacate the office, in relation to which the neglect or refusal has occurred. That an entire vacancy is thus immediately produced there can be no question, unless a constitutional law in full vigor can fail to produce its legitimate result. If, then, the office of a justice of the peace become thus vacant, is it possible for the Legislature directly to supply the vacancy, without violating the constitutional provision which gives to the people the sole power of electing to this office? Your committee believe it is not. Can we

[A. No. 287.]

then do that by indirection which, if done directly, would be the usurpation of an authority belonging exclusively to the people? Certainly not. If the office is actually vacated by such neglect or refusal, the people alone can fill it, by election. The principle that no power shall be taken from the people, which they have specially retained to themselves, is too sacred to be trifled with, from mere motive of convenience.

Your committee, therefore, recommend to this House a non-concurrence with the said amendments.

**No. 288.**

**IN ASSEMBLY,**

**April 6, 1832.**

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**REPORT**

**Of the select committee, on the petition of Gardner Wells.**

**Mr. Collins, from the select committee to whom was referred the petition of Gardner Wells, praying for the passage of a law allowing said Gardner Wells to build a dam across the Genesee river, in the town of Scio, in the county of Allegany,**

**REPORTED:**

**They have examined the subject, and the following are the reasons for granting the petition of said applicant: The Genesee river, across which it is proposed to erect the dam mentioned in said petition, is a public highway, but it is not deemed navigable at the place where the proposed dam is to be erected: that the country is well stored with pine and other valuable timber, the settlement new, and the inhabitants much in want of such improvements: that the construction of said dam will not, in the opinion of your committee, interfere, in the least, with the navigation of said river.**

**Your committee being satisfied of the truth of the above assigned reasons; and believing no injury will result to the public, and much benefit to the owner and the inhabitants of said town, by the erection of such dam, have directed their chairman to ask leave to introduce a bill according to the prayer of said petition.**



**IN ASSEMBLY,**

**April 6, 1832.**

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**REPORT**

**Of the committee on claims, on the petition of Asher Ford.**

The committee on claims, to whom was referred the petition of Asher Ford,

**REPORTED :**

That the petitioner enlisted as an orderly, (or first sergeant,) in colonel McKinstry's regiment, on or about the 16th day of April, 1781, under the act of the Legislature of this State, entitled "An act for raising two regiments, on bounties of unappropriated lands, for the defence of the State," passed 20th March, 1781; and having continued in the service, for the term of three years from the date of his enlistment, received from his colonel a regular certificate of his service, and an honorable discharge therefrom.

That the petitioner, not having received the bounty lands to which his patriotic services entitled him, in the year 1803 petitioned the Legislature for the same. The petition was referred to a committee, of which Mr. Wisner was chairman, who made an unfavorable report, giving as their reason therefor, that by the certificate of Jacob John Lansing, the commissary of musters, it appeared that the petitioner enlisted in pursuance of an act entitled "An act for raising two regiments on bounties of unappropriated lands, for the defence of the State," passed 18th March, 1781, whereas on examination no such act had passed on that day, but that such act was passed on the 20th March, 1781: that there was no evidence that the petitioner had not received his bounty lands, except his own affidavit; and that the committee were not fully satisfied with the evidence that he had served the time for which he enlisted.

The Assembly, not satisfied with the reasons given by the committee, sent back their report for reconsideration, and on the 23d day of February, 1803, the chairman reported a bill, entitled "An act for the benefit of Asher Ford." This bill, passing through the different forms of legislation, was, on the tenth day of March thereafter, read a third time and passed.

It also appears, from an examination of the Senate Journals of that year, that the said bill was read a 2d and 3d time, and on the 11th of the same month committed, with sundry other bills, to the committee of the whole, and that no further proceedings appear to have been had thereon.

It further appears that, in addition to the privations and hardships which he suffered in common with those brave men who joined him in our revolutionary struggle, the petitioner received a wound at the battle at White-Plains, in 1776, which has since rendered necessary the amputation of his right leg; and being thus rendered unable to procure a comfortable support, by his own personal exertions, he has been, for a considerable period, obliged to accept, (at the poor-house in the county of Warren,) such support as the excellent provisions of our poor laws have secured to every man who has the *misfortune* to be poor and infirm, but the *good fortune* to be an inhabitant of this State.

Your committee know no reason why the application for this relief, which so nearly succeeded in 1803, has not been renewed in the interim, except that given by the disinterested individual who has appeared before them in behalf of the petitioner, which is that the petitioner's poverty has deterred him from attending the sessions of the Legislature personally to prosecute his claim, or interesting others to do so.

In conclusion, your committee are of the opinion that the petitioner is entitled, for his services by the law under which he enlisted, to 500 acres of land; or, in lieu thereof, according to the rule recently adopted, to \$666.60. Your committee recommend the payment of that sum, have prepared a bill accordingly, and beg leave herewith to present the same.

**No. 290.**

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**IN ASSEMBLY,**

**April 7, 1832.**

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**REPORT**

**Of the select committee, on the petition of the inhabitants of the town of Milton, in the county of Saratoga.**

**Mr. Otis, from the select committee to whom was referred the petition of the inhabitants of the town of Milton, in the county of Saratoga, for leave to raise an additional sum for roads and bridges,**

**REPORTED:**

**That by the petition it appears that, owing to a stream running through said town, called the Kayaderosseras, a large number of bridges is required, and a great expense is necessarily incurred by the said town in their erection and maintenance: that the said town is now indebted, for the building and repairing of bridges, a large sum of money beyond its power of raising, by the present law.**

**It also appears that, in annual town-meeting of the said inhabitants, a resolution was passed, authorising an application to be made to this Legislature, for a law authorising them to levy an annual tax, of a sum not exceeding five hundred dollars, for the term of ten years, for the purpose of erecting and repairing roads and bridges, in said town.**

**Your committee are, therefore, of opinion that the prayer of the petitioners ought to be granted, and ask leave to introduce a bill accordingly.**





**No. 291.**

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**IN ASSEMBLY,**

**April 7, 1832.**

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**REPORT**

**Of the committee on the judiciary, on the petition of sundry inhabitants of the town of Lyme, in the county of Jefferson.**

**Mr. Young, from the committee on the judiciary, to whom was referred the petition of sundry inhabitants of the town of Lyme, in the county of Jefferson,**

**REPORTED :**

**That the petitioners represent that, at the annual meeting for the election of town officers in said town, on the fourteenth day of February last, Daniel Holbrook and John B. Esselstyne were duly elected to the office of justices of the peace, and that for reasons, (some of which are disclosed in the petition) they were not duly informed of their election, and did not determine by lot the term for which, as such justices, each of them should serve.**

**The committee are decidedly of the opinion that the offices did not become vacant by reason of such neglect. The only doubt entertained by the committee, was, whether Legislative aid was necessary ; and, upon full consideration, have come to the conclusion to ask leave to introduce a bill.**



**No. 292.**

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**IN ASSEMBLY,**

**April 7, 1832.**

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**REPORT**

**Of the Attorney-General, concerning lotteries.**

*April 6, 1832.*

**The Hon. CHARLES L. LIVINGSTON,**

*Speaker of the Assembly.*

I transmit herewith a report concerning lotteries, made in pursuance of a reference to me by the Assembly, of the presentment of the grand jury of the city and county of New-York.

I am, with great respect,

Your obedient servant,

**GREENE C. BRONSON.**

[A. No. 292.]



## REPORT.

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The Attorney-General, to whom was referred by the Assembly, the presentment of the grand jury of the city and county of New-York, concerning lotteries, respectfully submits the following

### REPORT:

The presentment was made at a court of general sessions of the peace, holden on the nineteenth day of November last, before the Recorder and two of the Aldermen of the city; and is in the following words :

“ The grand jury come into court, and make the following presentment, viz :—Agreeably to the advice of the court, the grand jury have devoted much of their attention to the subject of lotteries drawn within the limits of this city and county ; and from the investigations they have made, are unanimously of the opinion that the managers have sold an amount of tickets in lotteries already drawn, more than sufficient to raise the sums for which these lotteries were granted ; and that having enjoyed, *by the extent of their sales*, all the privileges to which they were entitled, their right to continue these lotteries has ceased. The grand jury are therefore of opinion that the managers of the New-York lotteries are now drawing them without authority, and hereby present the same as a nuisance. Under these circumstances, they deem it their duty to request the court to adopt such measures as they may judge expedient to bring this subject under the supervision of the next Legislature, in order that an evil so extensive and injurious may be speedily corrected.”

Previous to the year 1823, lotteries were under the direction of managers appointed by the State ; and the continuance of the system depended upon the necessary time for paying the several sums of money which had been granted to be raised by lottery. In that year the management of lotteries was transferred to certain literary in-

stitutions interested in the grants ; and the continuance of the system was limited by a certain period of time, beyond which the lotteries could in no event be extended ; and also by a restriction upon the whole amount of tickets which might be sold and drawn within the prescribed time.

The grand jury have proceeded on the ground that the whole amount of tickets authorised by law have already been sold and drawn, and that the right to continue the lottery is consequently at an end. While on the part of the managers, (who are understood to be the assignees and proprietors of all the lottery grants,) it is insisted, that by an act passed in the year 1826, they were released from the restriction upon the amount of sales, and are only affected by the general limitation of time ; and that within that period, (not yet expired,) they are authorised to continue the lotteries, without any reference to the amount of the sales, or the sums which have been, or may hereafter be realized.

The question presented for consideration by these conflicting opinions, is one of the highest importance to the public, and cannot but be deeply interesting to the managers. Its solution depends upon the right interpretation of several statute laws, concerning the most material of which a committee of the Assembly in 1829 remarked, that they were drawn "with singular obscurity, and the meaning of some of them is very difficult to be determined." If this be a just commentary upon the laws affecting the question, there can be no difficulty in accounting for the conflicting constructions which they have received ; and it will demand but a moderate exercise of charity to believe that all parties deem themselves in the right.

It is understood that all lottery grants previous to the year 1814 have been satisfied, with the exception of one in which the State was interested, and which will be hereafter noticed. By the act passed April 13th, 1814, entitled "An act instituting a lottery for the promotion of literature, and for other purposes," (Laws 1814, page 129,) several sums of money were granted to Union College and other institutions, amounting in the whole to the sum of \$274,000. This sum, together with the interest accruing thereon for a period not exceeding six years from the passing of the act, was to be raised by lottery. The lotteries drawn under this act, have usually been denominated "the literature lotteries."

By the act passed April 15th, 1814, "for the payment of certain officers of government, and for other purposes," (Laws 1814, page 237, section 51,) the sum of \$12,000 was granted to the Historical Society in the city of New-York, to be raised by lottery, after the payment of the previous grants had been completed.

On the fifth day of April 1822, an act was passed, entitled "An act to limit the continuance of lotteries," (Laws 1822, page 157.) By the first section of this act, the future management of the lottery authorised by the act of April 13th, 1814, was transferred from the State to the institutions interested in the grants; and the lottery was to be continued "for a limited time, in lieu of, and as an equivalent for, the several specific grants;" provided the institutions would "accept thereof for any limited time less than the time in which the State can raise and pay said grants at the rate monies have hitherto been raised and paid, or can, in the judgment of the Comptroller, be calculated, with safety to the State, to be hereafter raised and paid; which time shall be determined by that officer, from the facts and information in his possession, and a certificate thereof filed in the office of the Secretary of this State immediately after the passing of this act."

Pursuant to the requirement of this section, the Comptroller, on the ninth day of April 1822, made and filed a certificate in the office of the Secretary of State, the material parts of which are in the following words: "In pursuance therefore of the duty imposed upon the Comptroller, I, John Savage, Comptroller of the State of New-York, do hereby certify, that from facts and information in possession of the Comptroller, it appears that the nett avails of lotteries drawn in the last twenty-five years, have produced an annual average of twenty-four thousand five hundred and eighty-four dollars and fifty-seven cents. In the last five years, the annual average has been twenty-nine thousand nine hundred and fifty-six dollars and thirteen cents; and in the last three years, the annual average has been thirty-two thousand eight hundred and nine dollars and ninety-three cents. It is ascertained that the amount now due to the several institutions, is three hundred and twenty-two thousand two hundred and fifty-six dollars and eighty-one cents. In the judgment of the Comptroller, therefore, it may be calculated with safety to the State, that the above amount of three hundred and twenty-two thousand two hundred and fifty-six dollars and eighty-one cents, can be hereafter raised and paid in eleven years."

The period of eleven years was thus fixed as the time beyond which the literature lottery could in no event be continued ; but it might be sooner terminated under the provisions of the fifth section, which will be hereafter noticed.

By the seventh section of the act, the institutions were directed to raise and pay the grant of \$12,000 to the Historical Society ; and in consideration thereof, the limitation of time contained in the first section of the act was to be proportionably extended.

Pursuant to the second section of the act, the institutions severally accepted in writing the provisions of the act ; and their acceptance was filed in the office of the Secretary of State, on and previous to the twenty-first day of April 1823. Taking this as the period when the act commenced its operation, the limitation fixed by the Comptroller would expire on the twenty-first day of April 1834.

- By the act passed March 29th, 1811, entitled " An act to provide for the punctual payment of prizes in Union college lottery number two," (6 Web. p. 174,) the Comptroller was directed to borrow such sums of money as might be necessary for the payment of prizes, in case the notes of certain lottery dealers should not be paid at their maturity ; and if the whole amount of the notes could not be collected, it was made the duty of the managers of the then existing lotteries, " to raise, under the direction of the Comptroller, such additional sums by each and every of the said lotteries, as shall be required for the payment of the sums that may have been borrowed by virtue of this act, together with the interest thereon."

By the sixth section of " An act concerning lotteries," passed April 10th, 1818, (Laws 1818, p. 124,) the raising of this money was postponed for the period of six years. By the act passed March 24th, 1823, entitled " An act to authorise and provide for the erection of a Fever Hospital in the city of New-York," (Laws 1823, p. 92,) the corporation of the city of New-York was authorised, upon certain terms, to raise by lottery, " such money as is now authorised by the existing laws of this State to be raised by lottery, for the purpose of making up the losses which have been sustained in the former lotteries." But the corporation was not to proceed with this lottery until the termination of the time which had been allowed to the institutions to complete their grant, without their assent.



By the second section of this act, the corporation was made subject to the same limitations and restrictions, as to the time allowed to raise the monies, and the quantity of tickets to be sold, as had been provided by the act of April 5th, 1822. In a report made by a committee of the Assembly in 1829, (Laws 1829, p. 579,) it is stated, that by the mode of computation settled by the act of 1822, and fixed by the certificate of the Comptroller, "the drawing of this last lottery, together with the Historical Society lottery, would extend something more than four years beyond the year 1834, the time fixed for the closing of the literature lottery."

Although there is some difficulty in arriving at the true sum to be raised under the Fever Hospital grant, it is believed that the committee were not entirely accurate in their estimate. The sum originally paid on account of losses under the act of 1811, was \$61,685, and to this interest was to be added, which appears to have been charged at the rate of seven per centum. After allowing certain payments, the balance was stated on the books in the Comptroller's office, on the 6th April, 1814, at \$60,760.34. On the following day a payment of \$700 appears to have been made, by which the amount was reduced to the sum (rejecting fractions,) of \$60,060.—Calculating the interest on this sum down to the time of the grant to the corporation of New-York, about nine years, and deducting several payments in the mean time, amounting to about \$7,096, will give, as the amount to be raised by this lottery, about the sum of \$90,802. If the \$12,000 granted to the Historical Society be added to this sum, it will be found by the mode of computation before mentioned, that the time for completing these two grants will not exceed the period of three and a half years. This, added to the eleven years before mentioned, would give fourteen and a half years, (extending to October 1837,) as the longest period in which lotteries could, in any event be continued.

It should be noticed while upon this branch of the subject, that the managers claim that about two years should be added to the period fixed by the Comptroller for the continuance of the literature lottery, on account of the losses which were sustained in drawing the sixth class of that lottery; and in support of this position, they refer to a certificate made by the deputy comptroller on the 4th February, 1823, and filed in the Secretary's office on the 17th day of April following. In this document, the deputy comptroller, after reciting

the former certificate, proceeded as follows: "Which certificate was made without reference to any failure or delay in the payment of the nett avails of the 6th class of the literature lottery then drawing; which nett avails were estimated at \$33,000. Any ultimate failure in the payment of which must affect the above calculation to the extent of such failure, and extend proportionably the time in which it might be calculated with safety to the State, that the whole amount due the several institutions could be raised and paid."

It is deemed a sufficient answer to this statement, and to the claim founded upon it, that the act which was to be done by the Comptroller, was perfected when he filed his certificate with the Secretary of State the previous year, and was no longer subject to control or revision. There are, however, other reasons why the eleven years fixed by the Comptroller should not be extended. The sixth class of the literature lottery commenced drawing November 28, 1821, but did not terminate until May 2, 1822. The certificate of the Comptroller was made and filed on the ninth day of April previous, in which he states "the amount *now* due to the several institutions;" and it is highly improbable that he took into the account any "estimated" sums which had not then been realized, but which depended upon the success of a lottery then drawing. It appears from the Comptroller's books, that the sum of \$5,530.33 was paid to the institutions on account of this class; and if it was not in truth included by the Comptroller, then it should go to diminish the privileges granted by the act of 1822; for this sum was received after the amount due the Institutions had been ascertained by the certificate, and before the period assumed in this report when the eleven years commenced running. A like remark is supposed to be applicable to the seventh class of the literature lottery, which commenced drawing December 24, 1822, having been postponed from the ninth of September, on account of the yellow fever in New-York. When the drawing of this class terminated, or how much was raised by it, does not appear from the Comptroller's books. But if it yielded any fruit, it would go to diminish the time allowed by the Comptroller in his certificate. On the whole, therefore, it is believed, that in taking eleven years as the limit of the literature lottery, and commencing when the institutions filed their assent in April, 1823, no injustice can be done to them, or to the managers who stand in their place.

It will now be proper to consider the limitation of these lotteries, by the restriction upon the amount of tickets which might be sold and drawn within the prescribed time.

The recital and fifth enacting clause of the act of April 5, 1822, are in the following words :

*“ And whereas, the object of this act is not to increase the grants made to the said institutions, but to contract with them for assuming the responsibility, and running the hazard, and taking the management of the literature lottery, and thus to place them in a situation to save, in all future classes of said lottery, by more prudent contracts, and more careful management, whatever can be saved out of that indefinite amount that is liable on the present plan of conducting said lottery, to be raised and absorbed by the recurrence of losses and the payment of managers : Therefore,*

*“ V. And be it enacted, That the annual average amount of tickets, according to their scheme price, in all lotteries hereafter to be drawn under this act, during the term of years fixed by the Comptroller, shall not exceed the annual average amount of tickets, according to their scheme price, in the lotteries already drawn within this State, during the five years immediately preceding the first day of January, one thousand eight hundred and twenty-two, which amount of tickets shall be ascertained by the Comptroller, and a certificate thereof filed in the office of the Secretary of this State ; and said institutions shall furnish the Comptroller a certified copy of the amount of tickets, at their scheme price, in all classes hereafter to be drawn, that the same may be also filed in the office of the Secretary of this State ; and so soon as the whole amount of tickets, at their scheme price, authorised by this act, shall have been sold and drawn, the authority herein granted to said institutions shall cease, though the time fixed by the Comptroller in his certificate, may not have expired.”*

It is not known that there has been, or indeed, that there can be, any difference of opinion about the true construction of this section. The Comptroller was to ascertain and certify what had been the annual average amount of tickets at their scheme price, in the lotteries which had been drawn within this State during the five preceding years ; and that average was to limit the amount of tickets

which might be sold and drawn within the time fixed by the Comptroller's certificate. And whenever the whole amount of tickets at their scheme price authorized by the act, had been sold and drawn, the lottery was to cease, though the time fixed by the Comptroller should not have expired.

The deputy comptroller in his certificate already mentioned, stated the aggregate amount of tickets at their scheme price, which had been drawn in this State during the five years preceding the year 1822, at \$1,679,000. This would give as the annual average, the sum of \$335,800. But it was further certified that "there remained to be added, the further amount of the Owego lottery, drawn in New-York, by virtue of an act passed April 21, 1818, the amount of which said lottery is not found in any documents in this office."

The Milford and Owego road lottery (the one above mentioned,) was instituted by the State of New-Jersey. In 1817, an act was passed authorizing the sale of tickets in this lottery, within this State; and in 1818, an act authorizing the lottery to be drawn in the city of New-York. (Laws 1817, page 169. Laws 1818, page 283, sec. 1.) As this was a foreign lottery, the Comptroller's books afford no information concerning it: but the scheme is said to have amounted to the sum of \$270,000; and this statement is believed to be accurate. Dividing this amount by five, will give the sum of \$54,000, to be added to the annual average before mentioned; and making the whole amount of tickets which might be sold annually during eleven years, in the literature lottery, \$389,800.

This swelling of the amount of tickets which might be sold, results from the particular phraseology of the fifth section, which was probably adopted without any such design, for the section is immediately preceded by a recital, that "the object of the act is not to increase the grants." Yet it is evident that the grants, or rather the sum which the Institutions are permitted to raise, is increased, by including the Milford and Owego lottery. This annual increase of \$54,000, would, in the eleven years allowed for the literature lottery, amount to \$594,000, and the fifteen per cent allowed for the expenses and profits of the lottery, would produce annually, \$8,100; and in the eleven years the sum of \$89,100. And the same consequences follow in relation to the Fever Hospital grant.

Taking the sum of \$389,800 as the true annual average, the institutions would, in the eleven years allowed for drawing the literature lottery, be authorised to sell and draw tickets at scheme price, to the amount of \$4,287,800. The construction given to the law by the managers, appears to have been, that they were not limited to the exact annual average in each year, but that they might proceed more rapidly, provided they did not, in the whole amount of sales, exceed the sum to which that average would amount in the eleven years. The lottery would thus be closed at an earlier day than that fixed by the Comptroller; and the course pursued by the managers appears to be unobjectionable.

For the purpose of determining the progress of the lottery, the institutions were required, by the section already cited, to furnish the Comptroller with a certified copy of the amount of tickets, at their scheme price, in all classes thereafter to be drawn; which certificate was to be filed in the office of the Secretary of State. Pursuant to this requirement two certificates have been filed, stating the amount of all the tickets sold and drawn, from May 20, 1823, when the drawing commenced under the act of 1822, to August 30, 1826, when the managers commenced drawing under the act concerning the Albany land lottery; and by which, as is alleged, they were released from making any further statements; and no others have been filed.

From these two certificates it appears that the aggregate amount of tickets sold and drawn during the period which they embrace, (three years, three months and ten days,) was \$2,743,793.38. This would give, as an annual average, a fraction more than \$837,000; which is more than double the annual average, under the act of 1822. If the system has been continued since August, 1826, with only the same progress which was made before, the literature lottery, instead of continuing for eleven years, would, in consequence of the limitation upon the amount of sales, have been closed within the period of five years and two months. And the historical society and fever hospital lotteries, which are subject to a like limitation, instead of continuing for three and a half years, would have been closed in about one year and seven months; making in the whole a period of six years and nine months for completing all the lotteries authorised by law. And consequently those lotteries, instead of extending to October, 1837, as before mentioned in this report, would have terminated in January, 1830.

Yet there can be no doubt that the drawing of lotteries has proceeded with much greater rapidity since August, 1826, than it did before that time. And, from such information as has been obtained, it is believed that the aggregate amount of schemes drawn in the year 1830 alone, did not fall short of eight millions of dollars: and that this sum, enormous as it is, was exceeded by the lotteries of the last year. It is not, however, supposed that any thing like the whole amount of tickets, in those schemes, can have been sold; a very large amount must have remained upon the hands of the managers. But if tickets were sold to only one quarter of the sum of the lotteries drawn, it presents an amount of lottery operations which could not well have been anticipated by the Legislature.

It remains to be considered whether the restriction upon the amount of sales was removed by the act of 1826.

By the act passed April 14, 1820, entitled "An act to enable the mayor, aldermen and commonalty of the city of Albany, to dispose of their public lands by a lottery," (Laws, 1820, page 224,) the corporation was authorised to dispose of their lands by a lottery, not to exceed in amount two hundred and fifty thousand dollars. The first section of this act contained a proviso that the tickets in this lottery should not be sold or disposed of, by any person, or at any place out of the city and county of Albany. By an act passed March 15, 1822, (Laws, 1822, page 73, sec. 7,) this proviso was repealed.

On the 13th April, 1826, an act was passed entitled "An act to enable the mayor, aldermen and commonalty of the city of Albany to dispose of tickets in a lottery heretofore granted, and to limit the continuance of the same," (Laws, 1826, page 207.) By the first section of this act the corporation was authorised to contract with any person, for the drawing of this lottery; and the person with whom they should contract was authorised "to form such schemes for the said lottery, and to mix the prizes for the same with the money prizes" in the other lotteries authorised by law: provided the consent of the institutions interested in those lotteries should be previously obtained: "and provided also, that the land prizes, so mixed, and the tickets sold therefor, shall not, in the whole, exceed the sum of two hundred and fifty thousand dollars."

There is nothing in this section to affect the question to be settled. The second section, however, is very material upon this point, and is as follows:

**“2. *And be it further enacted,* That in case the said literary institutions, or their authorised agent or agents aforesaid, and the assignees of the grant to the city of New-York, as aforesaid, shall consent to the mixing of said lotteries and prizes as aforesaid, so that all the existing grants for lotteries may be closed within the time now limited by law for closing the drawing of the said lotteries in which they are respectively interested; that it shall and may be lawful for each of them to change the schemes of the said lotteries in which they are now respectively interested, in such manner as to admit of the mixing of said land and money prizes as aforesaid; and in lieu of the tickets in the schemes which they were heretofore authorised to dispose of, it shall be lawful for them to dispose of tickets at their discretion, in the schemes of mixed prizes herein authorised, during the time contemplated and prescribed for finishing the drawing of the present lotteries, in and by the first enacting clause of the act entitled “An act to limit the continuance of lotteries,” passed the fifth day of April, eighteen hundred and twenty-two, as the said time is calculated and estimated by the Comptroller in his certificate made under and by virtue of said enacting clause, on file in the office of the Secretary of this State, and as the said time is also provisionally reconsidered and restricted as aforesaid, or proportionally extended in a second certificate of the said Comptroller, made and given under the fifth section of the said act, and also filed in the office of the Secretary of this State.”**

Upon a careful examination of this section, the Attorney-General is of opinion that it does remove the restriction upon the amount of tickets which might be sold and drawn; and consequently, (if the act be valid,) that the managers may continue the lottery within the limited time, without any reference to the amount of sales, or the sums which been, or may hereafter be raised. The managers were before only authorised to sell tickets in schemes of money prizes, and to a limited amount: by this section they are permitted to change the schemes, and mix land with money prizes; and then “in lieu of the tickets in the schemes which they were heretofore authorised to dispose of, it shall be lawful for them to dispose of tickets at their discretion, in the schemes of mixed prizes herein authorised.” And, to manifest the intention still more clearly, it is added, that they may continue this sale of tickets in mixed schemes at their discretion, “during the time contemplated and prescribed for finishing the drawing of the present lotteries, in and by the first



enacting clause," of the act of April 5, 1822, as the said time had been calculated and estimated by the Comptroller.

Had the managers, in the section under consideration, been limited to the time prescribed for drawing the other lotteries, without going further, there would have been room for a different construction from that which has been given; for the time in which they might continue those lotteries had two limitations: first, a period which could in no event be exceeded; and second, a restriction upon the amount of sales, which might greatly diminish the general limitation. But the act goes further, and expressly refers the time to that prescribed by the first section of the act of 1822, and the calculation and certificate which the Comptroller had made under it; and does not refer to the fifth section of the last mentioned act, which contains the restriction upon the amount of sales. If this be the true construction of the act of 1826, it follows not only that the lotteries already drawn have been authorised by law, but that the system may still be continued.

The opinion has already been expressed in this report, that but for the act of 1826, all the lotteries authorised by law must have terminated more than two years since; this land lottery only excepted. And that would no doubt have remained as dormant in future, as it had during the six years that elapsed from the time it was first authorized, to the time it received its vital principle by the act under consideration. But by that act the land lottery was not only set in motion itself, but it acquired the power of carrying all the other lotteries with it.

It is important now to inquire how long this land lottery, and the others with which it is "mixed," may still be continued. The managers are understood to claim that their right extends through the whole period originally contemplated for the drawing of the literature lottery, as fixed by the Comptroller; and also to the additional time, which, upon the same principle, would have been required for completing the Historical Society and Fever Hospital grants: and legal opinions have been given to that effect. This period as it has been calculated on the part of the managers, would not expire until the year 1840; but as it has been estimated in this report, would terminate in October, 1837.



The construction of the act of 1826, upon which this claim is founded, cannot be admitted. It is true that the second section speaks of "the time now limited by law," for closing the other lotteries, in reference to the continuance of the lottery under this act. But this is so far from making out the claim set up, that had the section proceeded no further, this land lottery, with all the others, would now be at an end. The time then limited by law was a period beyond which the lotteries could not extend; subject however to an earlier termination, by means of the restriction upon the amount of sales. The restriction upon sales was as much a limitation of time, as was that provision which fixed the utmost period for the continuance of the system; with only this difference, that the one might be calculated in advance, while the other depended upon the course of events. But it cannot be doubted that the sale of the amount of tickets authorized by law to be sold, would as effectually close the lottery, as would the other limitation, which has been mentioned.

The true time for the continuance of this lottery, is believed to be that contemplated by the first section of the act of 1822, and fixed by the Comptroller's certificate for the duration of the literature lottery, without embracing any portion of the period allotted to the Historical Society, or the Fever Hospital grants. The second section before mentioned is very explicit upon this question. It provides that tickets in these schemes of mixed prizes might be sold; not during the time allowed for all the lotteries, but only "during the time contemplated and prescribed for finishing the drawing of the present lotteries, in and by the first enacting clause of the act" of 1822. That clause had no concern with any other than the literature lotteries. But to render the matter still more certain, the section not only speaks of the time contemplated and prescribed in and by the first enacting clause of the act of 1822, but it continues, "as the said time is calculated and estimated by the Comptroller in his certificate made under, and by virtue of said enacting clause, on file in the office of the Secretary of this State." This certificate, as we have before seen, fixed the time at eleven years. A second certificate (that made by the deputy comptroller in 1823) is also mentioned, as either restricting or extending this time. That certificate has already been considered.

It may be mentioned in confirmation of this opinion, that a committee of the Assembly gave the same construction to the act in

1829. (Laws 1829, p. 580.) The committee say, "the time limited for mixing land with money prizes is confined to the term fixed for closing the literature lottery, and does not extend to the Fever Hospital lottery." And the managers themselves, in the stipulation made at that time, assign the same period for the termination of the Albany land lottery and the literature lottery, without taking the Fever Hospital grant into the account.

Lotteries in schemes of mixed (money and land) prizes, may then be continued for the period of eleven years from the time the literary institutions filed their assent to the act of 1822; which will expire on the twenty-first day of April 1834: and beyond that time, in the opinion of the Attorney-General, there is no warrant of law for drawing any lottery within this State.

The arrangement made with the managers in 1829, (Laws 1829, p. 576,) has not been overlooked. Near the close of the session of the Legislature in that year, a stipulation was filed by the managers, a report was made by a committee of the Assembly, and a concurrent resolution of the two Houses was adopted upon this subject. In these proceedings, the end of the year 1835 is spoken of as a period for closing the lotteries; which would extend the system something more than one year and eight months beyond the time above mentioned as the limit assigned by law for terminating all the grants. It is not now designed to go into an examination of the report made by the committee, but only to consider very briefly the nature of the transaction, and whether it imposed any obligation either upon the managers or the State.

The managers, in their stipulation, after mentioning that the time for completing the several lottery grants would extend into the year 1840, proceed as follows: "We declare if we shall be permitted to continue the lotteries unmolested by proceedings of any sort, unless for any charge of misconduct in the management of lotteries, until the end of the year 1835, that we will surrender all our right to the remainder of the term of time which shall then be left." What possible obligation did this impose upon the managers? If they had any rights extending beyond the year 1835, the promise to surrender them was without any legal consideration, and was nothing more than the promise of a gift, which is utterly void. And if they had no such rights, this promised surrender would furnish but a slender basis for any engagement on the part of the State. The managers have themselves consulted counsel on this subject, and have been

furnished with an opinion corresponding to the one above expressed. That opinion also states other good reasons why the arrangement of 1829 did not bind the managers; and if it was not obligatory upon them, there is no principle upon which it can bind the State.

But what was done by the State on that occasion? A concurrent resolution passed the two Houses. This was not an act of the State: To make it such, it required the sanction of another branch of the government. But waiving this consideration, and regarding the transaction as an act of the State; still it was neither granted nor promised to the managers that the lotteries might be continued until the end of 1835, nor for a single day beyond the time previously limited by law for their termination. The resolution itself is too plain for comment. It is in the following words:

*“Resolved, That the Legislature hereby accepts the stipulation of Yates and M’Intyre set forth in the foregoing report, and that the same be filed with the Secretary of State; but the said Yates and M’Intyre shall not hereby be authorised to continue any lottery held by them for a longer period than they are now authorised by law to continue it, or to raise a greater sum of money by any such lottery than they are now authorised by law to raise.”*

Should it be questioned that the whole amount of tickets authorised by law to be disposed of in the money lotteries have already been sold and drawn, and that but for the act of 1826 all those lotteries would now be at an end; the fact may be ascertained by requiring the managers to furnish a certificate of the whole amount of tickets which have been sold and drawn since August 1826, (the date of the last report of sales,) pursuant to the fifth section of the act of 1822, and a similar provision in the act concerning the Fever Hospital lottery. There is nothing in either of those acts, so far as they require this certificate from the managers, that is either “inconsistent or repugnant” to the act of 1826; and consequently the fourth section of that act has not repealed this provision.

It is true upon the principles which have been advanced in this report, that the literature and Albany land lotteries may yet be continued for a limited time, without any reference to the amount of sales. But if after the lapse of that time, the right is claimed to continue the Historical Society and Fever Hospital lotteries, it must be upon the ground that those grants have not been legally satisfied;

and the evidence which the law has prescribed for determining that fact, may properly be demanded.

Should the Legislature concur in the opinion expressed in this report concerning the time for the legal termination of all lottery grants, and should the managers be disposed to yield their assent ; it is respectfully submitted that the public interest might be promoted by the final settlement of the question in such a manner as to place it beyond all future doubt or controversy. This might be effected by a proper deed of acquittance on the part of the managers, releasing the State from all right and claim to continue the system beyond the agreed time ; and by an act of the Legislature, fixing that period by law.

In conclusion, the Attorney-General deems it proper to mention the reason why the making of this report has been so long delayed. When the reference to him was made, he was actively engaged in court ; and when about to enter upon this investigation, he received an unexpected order to leave the State upon official business. And during the few days that have elapsed since his return, he has for the most part been prevented by illness from attending to the subject.

Respectfully submitted,

GREENE C. BRONSON,

*Attorney-General.*

*April 6, 1832.*

**IN ASSEMBLY,**

**April 7, 1832.**

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**REPORT**

**Of the select committee, on the petition of Samuel Barnum and Hezekiah Howell.**

Mr. Hiram Bennett, from the select committee to whom was referred the petition of Samuel Barnum and Hezekiah Howell, praying to be released from a judgment against them in favor of the people of this State,

**REPORTED :**

Said petitioners set forth in their petition, that in the year 1828, they signed a bond to the people of this State, for the sum of ten thousand dollars, which sum, or so much of the same as should be required to improve and render navigable the Neversink river, for rafts, should be so applied : that said sum was never under their control, and that they have been sued on the bond and a judgment obtained for eight thousand dollars, the deficiency of said bond : that they are entirely unable to pay said judgment : if their whole property should be sold that they could pay but a very few hundred dollars, which would reduce themselves and families to poverty.

From the best information your committee can gather, they have come to this conclusion : that the State must loose nearly the whole amount of money loaned to the Neversink navigation company ; and the only question *to decide*, is, will the State sell the property of these individuals, and reduce their families to poverty, and realize a few hundred dollars, and loose the remainder ; or will they release the securities from all liabilities, and pocket the whole loss ? The committee are assured that if all the property of these indivi-

duals should be sold, that the State could not receive more than from \$500 to \$800 from the avails of their property.

Your committee have come to the conclusion to ask leave to introduce a bill to release said securities from said judgment; and ask to introduce the same.

**IN ASSEMBLY,**

**April 11, 1832.**

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**REPORT**

**Of the select committee, on the petition of Asor Hamilton Perry, for leave to change his name.**

Mr. Seymour, from the select committee, to whom was referred the petition of Asor Hamilton Perry, who is desirous of having his name changed, so that he may be known hereafter only by the name of George Cooke, junior,

**REPORTED:**

That the petitioner is an orphan, without means to support himself, or his orphan brother. George Cooke, a gentleman residing in the city of Albany, who possesses a considerable estate in this country, and is heir to a large property in England, having no kindred to whom to bequeath his estate, has consented to assume the guardianship of the petitioner, and to make him, in the event of death, his sole heir, and leave to him his inheritance. It is the desire of the said Cooke, that the petitioner shall assume his name.

The committee are of the opinion that the petition is reasonable and proper, and ought to be granted; and for that purpose the committee have prepared a bill, and ask leave to introduce the same.





**IN ASSEMBLY,**

**April 10, 1832.**

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**REPORT**

**Of the committee on claims, on the petition of the heirs of Moses Brockway and others.**

Mr. Masters, from the committee on claims, to whom was referred the petition of the heirs of Moses Brockway and Thomas Canfield, and also of Peleg Brown and others, for remuneration for improvements on lots No. 64 and 28, in Freemason's or Bayard's patent, in the county of Herkimer,

**REPORTED :**

That the committee can not give the House a better history of the facts relating to the claim of the petitioners, than that which is contained in a communication made to the Assembly in 1826, by the Surveyor-General, on the petition of Nathan Underwood and others, and which will be seen in the journals of that year, see pages 511 to 514, inclusive, together with statements therein referred to. But in order to a more full understanding of the cases of both sets of petitioners, (the principles involved being *identical*, and the facts nearly so,) will advert only to the case of the heirs of Moses Brockway and Thomas Canfield. They complain that about 40 years ago, their fathers purchased in good faith 146 acres of land, being part of lot No. 64 in Freemason's or Bayard's patent, in Herkimer county, then wild or unimproved land, of Eli Brown, and paid him one dollar per acre therefor: that his title failing, they, (in order to secure their early improvements,) were about three years thereafter, obliged to purchase of one Henry Platner, (whose title was supposed to be valid,) at \$4 per acre, which through great exertions, they paid in full: that about this time it was rumored that his title was also defective, and that the people of this State had a claim thereto, by virtue of the attainder of John Weatherhead, an adhe-

rent of the British government: that the petitioners and other settlers on the lands in the vicinity, then petitioned the Legislature to assert its claim, so that the petitioners, (should such claim prove valid,) might obtain a good title to the lands, which they had twice purchased, and on which they had settled and made valuable improvements: that on reference of the matter to the Attorney-General he reported that "it was not, in his opinion, expedient for the State to pay off the old mortgage on the said lands which had been long before executed by the said Weatherhead, and the petitioners were *advised*, (as they state,) by some of the officers of the State government, to endeavor to effect a compromise with one John Thurman, who held the said mortgage: that the petitioners, after considerable delay and vexation, effected an arrangement with the said Thurman, by which they purchased all his right, title and interest of, in and to the said lots 64 and 28, and paid him therefor, at the rate of \$1 per acre.

That having discharged the said mortgage, (so far as related to those lots,) they fully believed their title to be finally and firmly established: that about seventeen years thereafter, the State purchased in the said mortgage of the said Thurman, covering several thousand acres, and including the said lots No. 64 and 28, and enforced their claim thereto, after a discovery had been filed of the lots as forfeited; and the said lots were appraised by Evans Wherry and John Myers, persons acting by the consent and under the authority of the State, but employed by Merry, who made the discovery of the supposed forfeiture, and who, if such forfeiture had been satisfactorily established, would have been, by law, entitled to a certain proportion thereof for such discovery, which appraisal on the field-book, in the Surveyor-General's office, was as follows:

The said lot 64, containing  $488\frac{26}{100}$  acres, at \$3,345, equal to \$7 per acre; and the said lot No. 28, containing  $476\frac{3}{10}$  acres, at \$2,981.13, equal to about \$6.25 per acre.

That on the trial before the supreme court the title of the State to the said lots, by reason of the attainder of the said John Weatherhead, could not be sustained, and became vested in the State under the said mortgage only.

The petitioners insist that, by their payment to John Thurman of the amount claimed by him, the said mortgage was in effect discharged, so far as the same related to said lots 64 and 28, or that

such payment and the release of John Thurman to them, operated as an assignment in equity of the mortgage to the persons paying the same.

They produced the affidavits of Ebenezer Cowles and Nathan Underwood, two respectable and credible witnesses, who testified that they were present at the settlement with Thurman, and that it was expressly agreed that the mortgage should enure to the benefit of the settlers who paid the money.

They also contend that the appraisers, on the part of the State, estimated the land at much too high a rate, inasmuch as they included therein all the improvements made thereon by the settlers. The petitioners shew, by the affidavit of Ebenezer Cowles and Ebenezer Goodell, who reside in the vicinity of, and are well acquainted with lot No. 64, that the land was not worth, in an uncultivated State, more than \$3.50 per acre; and also by the affidavit of the said Ebenezer Cowles, and two other respectable individuals, that lot No. 28 was not, in the same state, worth over \$3.75 per acre. From these affidavits, and from considerations suggested by the manner in which the appraisement of Wherry and Myers was procured, your committee are of the opinion that the claimants are justly entitled to relief, and to be remunerated, to the amount of their improvements at the time of the appraisement.

Wherefore your committee recommend that the heirs of the said Brockway and Canfield be allowed at the rate of \$3.50 per acre for their improvements on 146 acres of lot No. 64; and that Poleg Brown and others, occupants of lot No. 28, containing 476 acres, be allowed at the rate of \$2.50 per acre for their improvements, corresponding with the relief granted to Nathan Underwood and others, settlers on the residue of lot No. 64, by an act entitled "An act for the relief of Nathan Underwood," passed April 19, 1830.

In conformity with the above views, your committee have prepared a bill, which they herewith ask leave to present.



**IN ASSEMBLY,**

**March 19, 1832.**

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**REPORT**

**Of the select committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York.**

**Mr. Ostrander, from the select committee to which was referred the memorial of the mayor, aldermen and commonalty of the city of New-York, for a division of the ninth ward of the city of New-York,**

**REPORTED :**

**That they have had the subject matter referred to them, under consideration ; from which it appears, that the memorialists have been applied to by the inhabitants of the ninth ward of the city of New-York, to take the necessary measures to divide the ninth ward of said city into two wards. The petitioners represent that they have, in order to ascertain more clearly the wishes of the citizens generally residing in said ward, caused notices to be published, calling for objections, if any, to such proposed division ; from which it appears that the citizens are unanimous as to the propriety of making such division. The memorialists have determined on a line of division, which they consider the most expedient for public convenience, which was adopted in common council of said city. The memorialists pray for the passage of a law to carry into effect the above proposed division of said ward. Your committee are of opinion, from the facts set forth by the petitioners, that the prayer of the petitioners is reasonable, and ought to be granted : Your committee therefore ask leave to introduce a bill prepared for that purpose.**



**No. 297.**

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**IN ASSEMBLY,**

**April 12, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the village of Burlington Green, in the county of Otsego, for the incorporation of a fire engine company.**

**Mr. Thompson, from the select committee, to which was referred the petition of sundry inhabitants of the village of Burlington Green, in the county of Otsego, praying for the incorporation of a fire engine company in said village,**

**REPORTED:**

**That they have had the same under consideration. The petitioners represent that they have lately purchased a fire engine, and that for the more advantageous use thereof, it is necessary that a fire engine company should be formed in said village, for the extinguishment of fires. The requisite legal notices appear to have been published; and the committee being of opinion that the prayer of the petitioners ought to be granted, have directed their chairman to ask leave to introduce a bill.**





**No. 298.**

# **IN ASSEMBLY,**

**April 16, 1832.**

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## **REPORT**

**Of the select committee, on the several memorials  
against appointing chaplains to the Legislature.**

Mr. Moulton, from the select committee to whom were referred twenty-six memorials from the inhabitants of various towns and counties in this State, against appointing chaplains to the Legislature, and against the law by which money is drawn from the public treasury to pay for religious services,

### **RESPECTFULLY REPORTS:**

That they have taken the subject matter of the said memorials into their serious consideration, and given to it that attentive examination to which its great importance eminently entitles it.

Knowing that a great contrariety of opinions are entertained, and that numerous and conflicting prejudices exist in the minds of many honest and zealous religious sectarians on the subject treated on in the said memorials; and being aware that the due discharge of the duties assigned to the committee, requires them to explore ground which, by some persons, is deemed *holy*, and to disturb questions which, by many, have long been regarded as fully and righteously settled; the committee have examined the subjects referred to them with all that candor and circumspection which they deem consistent with their duties to their constituents—the due exercise of their own rights of conscience, and their disposition to treat the opinions of their fellow men with all that deference and respect to which, by the law of equal rights and the provisions of the constitution of the civil government of the State, they are entitled.

Your committee have not deemed it necessary or useful, on the present occasion, to grope amidst the ignorance and superstition of  
[A. No. 298.]

the darker ages, to discover the origin or utility of legislative prayers—nor to learn what nations *have*, or what have *not* practised them; nor to ascertain whether the custom was derived from human or divine authority. The “march of mind” must have progressed to a very limited extent and to very little useful purpose, if the civil and religious liberties of the people of this country were to be ascertained and measured by the opinions and customs of mankind in remote ages and in other nations, and under governments as dissimilar in their principles and character to those of our own country, as they were incompatible with the equal rights of man. Yet, amidst all the heterogeneous details of falsehood, fable and fact, which constitute the history of man, of nations and of governments, there are no truths more clearly illustrated by historic record and the concurrent testimony derived from the present state of the civilized world, than, that no nation was ever free, or could be so, while subjected to a government constituted of a union of political and ecclesiastical powers: that no political despotism ever did or could long exist, unsustained by clerical influence: that no religion could be “pure and undefiled,” when perverted to political purposes, and that no people could escape being depraved and miserable, when subjected to the double tyranny of spiritual and political power. Nor can a different result be rationally expected from the combined operation of church and state machinery; for it has generally happened, that when political authority has been given to men who believe themselves to be elected ministers of a power above the people, and to possess authority “beyond the civil law”—who are prone to regard their own will and opinions as the will and word of their master, and whose *interest* and business calling is, to propagate their own religious creeds, they have ever been disposed to render their political influence subservient to their own views of religious duty, and have always exercised their political power to sustain their own particular *church* and *faith*, to the detriment and exclusion of all others. “In *some* instances,” says the venerable and patriotic Madison, in his remonstrance to the Legislature of Virginia, against a bill establishing a provision for teachers of the christian religion, “they (ecclesiastical establishments) have been seen to erect a spiritual tyranny on the ruins of the civil authority: in *more* instances, they have been seen upholding the *thrones* of political tyranny; and in *no* instance have they been seen the guardians of the liberties of the people.”

It was doubtless these truths, attested by historic evidence, and the observation of the American people, that induced them to hold as political axioms, that the union of church and state is incompatible with free government and destructive to the moral influence of all statutory religion; and that to vest with political power, those who claim to possess authority paramount to *that* derived from man, is dangerous or destructive to the civil and religious liberties of the people.

That the patriots of the American revolution, who adopted the State Constitution of 1777, recognized the aforementioned evils, and intended to guard against them, is proved by the unequivocal phraseology of those provisions of that instrument which were intended to sever the union of church and state powers, and to protect the civil and religious liberties of their country; the thirty-eighth article of which said constitution, is in the words following, viz: "And whereas we are required by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: this convention doth further, in the name of the good people of this State, ordain, determine and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this State to all mankind: *Provided*, That the liberty of conscience hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this State."

It was unquestionably with the same view that the convention, when about to revive a portion of the laws of England and of the late province of New-York, all of which were effectually nullified by virtue of the declaration of independence, expressly excepted from such revival all laws by which church and state had been leagued together. Accordingly they declared, in the 35th article of the constitution, "That all such parts of the said common law, and all such of the statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians or their ministers, or are repugnant to this constitution, be, and they are hereby abrogated and rejected." Thereby expressly confirming the logical and legal effect of the declaration of independence, to destroy all laws tending to an alliance of eccle-

siastical and political powers, and also all laws by which ministers of religion could be maintained from the public treasury, or receive pay for their religious services, but from the private purse and voluntary contributions of those who chose to employ them.

It will be proper here to observe, that the 13th section of the 7th article of the new constitution, which, in concurrence with the above quoted article of the former constitution of this State, declares that "all such parts of the common law, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April one thousand seven hundred and seventy-five ; and the resolutions of the congress of the said colony, and of the *convention of the State of New-York*, in force on the twentieth day of April one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered ; and such acts of the legislature of this State as are now in force, shall be and continue to be the law of this State, subject to such alterations as the legislature shall make concerning the same : But all such parts of the said common law, and such of the said acts or parts thereof, as are repugnant to this constitution, are hereby abrogated." Thereby leaving *in statu quo*, where the declaration of independence and the constitution of 1777 had left them, "*abrogated and rejected*," all those laws "which might be construed to establish or maintain any particular denomination of christians or their ministers," as well as all others tending to amalgamate ecclesiastical and political powers, or in any way to infringe the religious liberty of the people, or of any individual within this State.

In the same spirit and with the same view to religious liberty, it is declared in the first and the present constitution, that "no minister of the gospel or priest of any denomination whatsoever, shall, at any time hereafter, under any *pretence* or *description* whatever, be eligible to, or capable of holding any civil or military office or place within this state."

Yet, notwithstanding so much care had been taken to guard against ecclesiastical encroachments, we find, in a very few years after the adoption of the first constitution of this State, priests were ushered into the halls of political legislation, not only, (as we shall show,) without legal authority, but in direct opposition to the spirit and express provisions of that instrument. This incipient step towards a union of religion and political legislation, is a measure but of recent date, and seems to have been introduced when the principles of our

free republican government and the provisions of the constitution were not kept in view. Before the revolution, while New-York was a colony to a nation governed by a union of church and state powers, no provision was made by the provincial legislature for the support of chaplains, nor were any ever employed to officiate before that body. Such continued to be the case for a few years after the adoption of the constitution of 1777, no chaplain being appointed by either branch of the Legislature. The precise time when they first *received a legislative call* to mingle religion and politics together, is not fully ascertained. But is well understood that the practice was never authorized by any provision of the constitution; and for many years was destitute of any statutory enactment to sanction it: nor was it ever based on higher authority than the naked *resolutions* of the two branches of the Legislature, each acting independently of the other, until the year 1829, when by the Revised Statutes, first part, page 161, section seventh, chapter seventh, title sixth, the *pay* of chaplains was first prescribed by law, and priests thus recognized as if they were legitimate and necessary appurtenances to the legislative department of the State.

The history of the incipient and successive measures, which resulted in the above mentioned statutory union of ecclesiastical and political concerns, is another illustration of the truth, that the least participation of clerical with civil authority, is dangerous to the liberties of the people; and proves the wisdom of the celebrated *Junius*, who strongly admonished his fellow-citizens, "never to suffer an invasion of their political constitution, however minute the instance might appear, to pass without a determined, persevering resistance. One precedent creates another. They soon accumulate and constitute law. What yesterday was fact, to day is doctrine. Examples are supposed to justify the most dangerous measures, and when they do not exactly suit, the defect is supplied by analogy. This is not the cause of faction, or of a party, or of an individual; but the common interest of every man in the community."

The adoption and continuance of the practice under consideration, after the nullification of all laws uniting church and state, "and after the adoption of a constitution of civil government repugnant to it, both in its spirit and provisions, is no sufficient reason for its further continuance; proof of its harmless influence on the religious liberties of the people. So intimate an association of official legislative duties, with religious forms and ceremonies, is a practical approxi-

mation to a union of church and state. The facility which it affords for the exercise of clerical influence in the legislative department of the government," militates against the equal rights of conscience, and also accounts for the existence and continuance of several other laws on our statute books, which actually trench on religious liberty, in contravention to those provisions of the constitution which were intended to repress the *evil spirit* of religious intolerance and persecution.

Your committee will now proceed to show that the Legislature possess no legitimate authority to associate religious prayers with legislative proceedings, nor to appoint legislative chaplains, nor to appropriate the public money to pay for any religious service: and because,

- 1st. No such authority has been delegated to them: and,
- 2d. Because the exercise of such powers is not only repugnant to the constitution, but expressly interdicted by it.

It will not be denied, and hence not necessary to prove that the Legislature is vested with civil powers *only*; and have not been clothed with spiritual jurisdiction. Nor will it be requisite to inquire into the utility of religious prayers, or the obligation to pray, as a religious duty. "Religion is a concern between a man's conscience and his God, with which no human tribunal has a right to meddle." If prayer be deemed an act of religious devotion, the Legislature have no authority officially to perform it, nor to require others to do so, or to attend its performance. The people have not delegated power to the Legislature to perform religious worship of any kind; and if prayers are acts of ecclesiastical character and of religious duty, legislative prayers are acts of supererogation; and legislative acts which transcend the powers delegated by the people to the Legislature, are an official exercise of "power beyond the law," and as unauthorized as they would be if expressly interdicted by those provisions of the constitution which are intended to prevent an alliance of political and ecclesiastical powers, and to preserve the unrestrained exercise and enjoyment of religious opinion.

But the absence of legal authority is not the only objection to which the practice under consideration is obnoxious. It often interferes with the legitimate business of the Legislature, and thus operates unpropitiously to the public interest. Some members of the Legislature, like many of their constituents, conscientiously dis-

approve of prayers altogether; others are averse to *legislative* prayers; others again do not hold to prayers in *public places*; and amidst the congregated assembly of persons of various religious sects and adverse religious opinions, and who are elected without reference to their religious creeds, there are but few who can at any one time join heartily in the service. And the effect produced in the minds of such as are induced by courtesy, or are constrained by a species of legal coercion to attend *legislative prayer meetings*, is any thing but piety or "a praying spirit."

Mankind are generally averse to associate in religious devotion with any but those whose feelings and faith accord with their own; and although regard to the opinions of others may often induce some occasionally to listen with respectful attention to a sincere suppliant; yet being as many of the members of the Legislature frequently are, annoyed by the repeated annunciation of sentiments out of harmony with their own; and finding at length their courtesy greatly over taxed, their feeling constantly disobliged, and their convictions as often counteracted by attending prayers in which they have no *faith*, and with those with whom they cannot consistently with their own *creeds*, have any religious communion or fellowship, they usually absent themselves from the legislative chambers until after the ecclesiastical business of the house shall have been concluded. Hence it is, that during prayer time, there is seldom more than a lean quorum in attendance, and often less. It was doubtless owing to the extended operation of the same cause, that on one occasion during the present session the *Speaker* adjourned the House of Assembly for want of a quorum to transact legislative business, although a great majority of the members were in and about the Capitol, and appeared in the legislative chamber in a very few minutes after the adjournment.

Having shown that *getting up* legislative religious prayers are inconsistent with the authority delegated to the Legislature, unauthorized by the constitution, and hence an exercise of "powers beyond the law" it would seem superfluous to prove that the Legislature have no legitimate power to appoint legislative chaplains.

It is a self-evident and incontrovertible principle, that no person nor body of men have a right to empower others to do *that* which no one, nor any number, have a right to do themselves. The Legislature having no right to convert the legislative chambers into "re-



ligious session rooms," nor to transform the legislative assemblies of the political delegates of the people into religious "prayer meetings;" nor any right to attempt, by official vote, to constrain the minority, against their religious opinions, to submit to such an incongruous intermixture of political and religious concerns: Consequently, they have no right to appoint others to do so; and hence, conclusively, have no right to appoint ministers of religion, nor priests of any denomination, to say prayers, or to perform any other kind of religious service for the Legislature.

See to what extreme absurdities, and to what revolting results a concession of the power in question would lead.

The exercise of power by the Legislature, to employ priests to perform religious worship, not being authorised by the constitution or constitutional law, is altogether an *assumed* power. Originating in the bare *will* of the Legislature, it has no limit of time, place nor extent. Dependent alone on the legislative *will*, it is as uncertain and unstable as the fluctuating opinions of mankind, and as undefined and undefinable as the future opinions of different men at different times, who might in their turn assume authority to legislate on religious matters. Being subjected to legislative *will*, it can be altered at any time, moulded to any shape, directed to any object, used for any purpose, and carried, under religious and moral pretences, to any extent to which the Legislature, according to their good will and pleasure, may from time to time think proper to dictate.

If the right of the Legislature to appoint chaplains to *pray* were to be admitted, the right to employ them to *preach* and *sing psalms* could not be denied. *All* are religious *services*, and are deemed by many to be religious *duties*. By the like assumed authority by which the Legislature employ chaplains to *pray* at *one* time, they could employ them to do the like, or any other religious *service*, at any *other time*; on *Sunday* as well as on any *other day*; and at *one place* as well as *another*. If in the halls of legislation, why not *out* of them? If in the form of prayer, why *not* in any other manner? What then could prevent their assuming authority to direct and regulate religious worship throughout the State? The *precedent* for such a measure is before them; and can be followed as legally, and with as much propriety as that which attaches to the example set by the State *Executive*, who, under his official proclamation, with the air of legality, the apparent *forms* of law, and the language of recommendation, prescribes the performance of religious worship on *fast*



and *thanksgiving* days throughout the State. And if the Legislature had a right to appoint any person to an *ecclesiastical office*, or any minister of religion to any *civil* office in the Legislature, they could follow their own precedent, and *create* ecclesiastical offices, and appoint persons to fill them, *out* of the Legislature; and with as good authority as *that* by which they have actually appointed priests to civil offices, both *in* and *out* of the legislative department of the government.

It is no sufficient apology for the official employment of *priests* by the Legislature, that the *clergy* of all sects in the city of Albany, “*without discrimination or preference*,” are appointed to the office of legislative chaplains. The words “*without discrimination or preference*,” are used in the provision of the constitution, which interdicts legislative interference with the religious concerns of their constituents, and guarantees the freedom of religious opinion, “*without discrimination or preference to all mankind within this State*,” and affords no justification for the appointment of priests to civil or ecclesiastical office, “*without discrimination or preference*.” Having no constitutional authority to appoint *any*, they can have no right to appoint *all* or any portion of the clergy to any office: nor in fact are chaplains appointed “*without discrimination or preference*.”

It is true, that on the face of the *resolutions* by which the clergy in Albany are called to officiate in the Legislature, no discrimination *appears* to be made among the various sects. But can any person who knows the *true meaning* of those resolutions believe, that were there a *Shaker* society in Albany, they would be considered as included in those resolutions, or their *ministering elder* be permitted to perform any of his religious duties in the Legislature? Can it be imagined that the Legislature meant, under any circumstances, to give a *call* to *Shaker* chaplains, and to join in the devotions of that humble sect, whose *faith* and *trust* in God is such; they have no fear that he will do them any wrong, and therefore never *pray* to have him do as *he* or *they* think *right*; but with hearts inspired with gratitude and joy, they hymn his praise in music’s moving strains, and perform with measured step, as *pious David* did, a solemn “dance before the Lord.”

But the proof that a discrimination is made, and intended to be made, by which *all* the clergy in Albany have not been permitted to officiate even in *prayer*, at the instance of the Legislature, does not rest alone on hypothetical data. The committee are credibly

informed and think, as the circumstance was noticed in the public prints, it may still be in the recollection of some of the members of this House, that some three or four years since, a respectable, regular, orthodox clergyman, who has the pastoral charge of a *coloured* flock in this city, knowing that the *resolutions* by which chaplains were appointed to make legislative prayers, made no discrimination which excluded him from participating with his professional brethren, in offering praise and supplication to an almighty and just God, who is "no respecter of persons," nor the colour of "the outward man," he claimed his equal right to *pray* and to be paid. The dilemma thus produced was the subject of negotiation, which resulted in a compromise, by which the *sable* pastor was paid from the public purse, *not* for saying prayers for the Legislature, as other chaplains did, but for *not* saying them: and thus obtained "the penny without the pater noster." Whether it is true, as is said, that a similar arrangement is yearly made, your committee have not been able fully to ascertain, but believe the fact is so.

Your committee will close this part of the subject under discussion, with an item of testimony before noticed, and which is so clear and unequivocal, that he "who runs may read and understand" that the power to appoint chaplains to the Legislature is expressly interdicted by the constitution; the enacting clause of the fourth section of the seventh article of which, is in the words following: "no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any *pretence* or *description* whatever, be eligible to or capable of holding any civil or military office or place within the State."

The office of chaplain to the Legislature, is a *civil* or an *ecclesiastical* office. Prayer is not a civil, but *religious* duty. To appoint priests or others to do *religious service*, is to appoint them to ecclesiastical office. Were the office of chaplain a civil office, the appointment of a priest to perform the duties connected with it, would be, as has been already proved, a palpable violation of the above recited provision of the constitution: and there being no ecclesiastical authority vested in the Legislature, they are as totally destitute of legitimate power to create an ecclesiastical office, or to appoint priests to perform any religious duty or service whatever, as if the official employment of chaplains for such purpose, by the Legislature were in *express terms* prohibited by the constitution.

After showing that the Legislature possess no legitimate power to associate religious devotion with legislative business proceedings, nor to appoint others to do so; it would seem to be superfluous to prove that it follows, as a necessary consequence, that they have no better warrant to take money from the public treasury to pay officers who they have no right to appoint; or for services which they have no better authority officially to require. Yet your committee trust it will not be deemed obtrusive if they offer a few observations on the subject of the *pay* of chaplains with the money of the people.

It is well said, in several of the memorials on this subject, that "the laborer is worthy of his hire;" and that when priests or other persons are *hired* to do religious duty, or to render any other *service*, they ought, in justice, to be paid, if they require it: but justice also requires that they should be paid by those at whose instance, and for whose benefit their services may be rendered, and not from the public purse, nor from the pockets of individuals who neither require nor approve *public* prayers, nor any *hired* religious devotion. No person of mature understanding, who is acquainted with the principles of our government and the provisions of the constitution will contend that the Legislature have a right to enact a law, expressly for the purpose of levying a direct tax on the people to pay the wages of priests appointed to say *prayers*, or to perform any other kind of *religious service* for the Legislature. Equally certain is it, that they have no better right to take money which has been paid by the people for legitimate objects, and apply it to purposes for which the Legislature have no constitutional right to impose a tax.

Again: your committee will repeat, if the Legislature have a right to grant the public money to such officers, for *religious services* performed for the Legislature *within* the doors of the halls of legislation; they have equally as good (assumed) authority to grant like pay for like services performed *out* of the pale of the legislative chambers. And as the *will* and *pleasure* of the Legislature are the only basis of all the measures and proceedings, against which your committee are reasoning, the same authority, with the same propriety, might with equal justice grant *per diem* pay for religious services performed under legislative auspices *any where* in the State; and by the exercise of power which would be as righteously assumed in *all cases* as in the appointment of a single chaplain,

might honor *all* the clergy in the State with the *office*: and by recognizing the principle assumed in the case of the *coloured pastor*, and following that *precedent*, might appropriate the public taxes to the payment of *all* priests, whom they might choose to honor with the office of legislative chaplains, and so put them *all*, “without discrimination or preference,” under per diem pay at the public expense, whether they actually officiated in the Legislature or not. Thus one united legislative and ecclesiastical encroachment would be followed by another, until their influence in the political councils of the State would, if suffered to prevail, endanger or destroy the civil and religious liberties of the people.

Your committee would be willing here to close their remarks, were they not aware that there is an *evil spirit* abroad, seeking to infuse its baleful influence among the people, to obtain a dominant power in the civil government, through which to manage all the political concerns of the nation, and thus to establish ecclesiastical dominion on the ruins of our free republican institutions, and the civil and religious liberties of our country.

To stifle thought, to suppress the exercise of human reason, and to prevent the use of argument, the name of God and of religion have often been profanely used to excite hostility and denunciation against *all* who oppose clerical domination, or any measures tending to a union of church and state, or who dare evince moral courage sufficient to exercise the rights of conscience, and maintain the freedom of opinion and the right of free discussion.

In opposition to the view which your committee have taken of the subject of the present report, it may again, as with like intent it often has been said, “*that the United States are a nation of christians; that christianity is the law of the land, and that all are infidels who disbelieve this doctrine or oppose it.*”

Were it true that christianity, as such, is the law of the land, because a majority of the people are professing christians, it would be indispensable that every citizen should know *what christianity is*; because *all* ought to know the law, who are required to obey it. It would become essential then to ascertain which particular *creed*, of the seventy different christian sects, is to be respected as the law of the land, and by which the other *sixty-nine* would be held as illegal. If a majority can arbitrarily violate the provisions of the constitution by which the rights of the minority were intended to be secured, on

the same principle then, *Methodism*, which is as much entitled to the name of christianity as the *creed* of any other sect, and the professors of which possess as much intelligence, integrity, and sincere religious *faith* as any other, and are far more *numerous* than any other christian sect in this country, would be justly deemed "the law of the land;" and the creed and worship of the minor christian sects would be adjudged illegal. And when we consider that *all may be wrong, and only one can be right*, it might become highly important, in order to know what kind of christianity is "the law of the land," to ascertain whether the religious *faith* of St. Paul or St. Peter, Martin Luther or John Calvin, would be considered as *the law of the State*; and which two or three of these would be denounced as illegal. Equally requisite would it be, in order to know "the law of the land," to understand whether *modern* or *primitive* christianity is such.

To settle all these questions or any of them, would require the united effort of church and state. A religious inquisition would thence be indispensable; and all the horrid scenes of the darker ages, when ecclesiastical power reigned triumphant, would be again reacted. Our "happy land" would be as other nations have been, the bloody arena of religious strife, and church and state contention. The advocates of the mis-called christian *law*, would discuss its merits and its claims "sword in hand;" and *fire* and *faggot*, the *rack* and the *wheel*, would be used to prove the *truth*, enforce *conviction*, and to make converts to the *faith* sustained by the prevailing influence of such irresistible means of "adding to the church such as would be saved" from the power and tender mercies of the *holy office*, and the purifying flames of a religious *auto da fe*!

But to many honest and sincere *professors* of christianity, it ought to be a source of felicitation, that "the kingdom of Christ is not of this world;" and that the precepts and doctrines of *Jesus* are not "the law of the land:" for were they so, "prayers in *public places*" would be by law interdicted and suppressed; and men would be obliged, "*when they pray, to go into their closets and shut the doors and pray in secret.*" And those who profess to be sent by God, to "go throughout all the earth and teach the gospel to every creature, without money and without price," would not be allowed by *law* to take *pay* for preaching or for *prayers*: nor would the people be *taxed* to pay *hire* for the performance of any religious *duty*. And were the precepts and doctrines of *Jesus* and his apostles, to be regarded as "*the law of the land*," none would be obliged, as by *statute law*

they *now are against their religious faith*, to observe a religious Sabbath day, nor to respect "one day more *holy* than another." And all those, who, instigated by an *evil spirit* of intolerance and persecution, denounce, backbite and traduce those who *believe* in the truth and justice of the precepts and doctrines just alluded to, would be regarded as *hypocrites* and *infidels* to primitive christianity, and violaters of "*the law of the land.*"

But it is not true that christianity as such is the law of the land. The constitution is the *supreme* law of the land; by virtue of which, the *mosque*, the *synagogue*, the *christian church*, and all other churches and religions are placed on equal grounds. It makes no discrimination between them, nor allows any preference to be given by law to any or either of them. It prohibits none—protects all, but permits no religious creed to be enforced as the law of the land. Hence the law of the land is, that no religious creed, as such, can be recognized as the law of the State: that "all mankind," and therefore every individual "within this State," have an equal and unalienable right to "*believe* according to the dictates of their understanding," and no person, nor "human tribunal," has a right to use the name of *God* or *religion* to make men afraid to avow their honest and conscientious opinions, or in any way to coerce them to act the *hypocrite*, with a view to escape the wrath, or to propitiate the *evil spirit* of religious intolerance and persecution, which is denounced in the christian books and interdicted by the constitution of this State: both of which place clergymen precisely in that situation, which was recognized and approved by their great and acknowledged master. Neither he nor his apostles entered the halls of legislation, except when forced there by his persecutors; nor did he or his disciples ever claim or aspire to participate in the business of civil government, nor assume to be "judges or dividers in Israel." On the contrary, they shunned the political world as a source of contamination, tending to abstract the mind from the study and pursuit of eternal truth, and to pollute it with views and interests incompatible with their clerical vocation. They therefore neither sought nor received political aid, nor the pecuniary emoluments attached to services unknown to them, but which, in the revolution of time and events, have been sought and obtained by their successors.

The result of all the foregoing facts and arguments is, that your committee have arrived to the most satisfactory conclusion, that the association of ecclesiastical duties with political legislative proceed-



ings, is unauthorised by any power delegated by the people—is incompatible with the character of a free government, predicated on the principle of equal rights—uncongenial with the spirit and provisions of the constitution of this State, and that the practice ought therefore to be abolished. That to appoint priests to the office of legislative chaplains, is to appoint them to ecclesiastical or civil office. The former is unauthorised, and the latter expressly interdicted by the constitution, and ought not in future to be repeated. That to take the people's money to pay for religious prayers or any religious service, transcends the legitimate power of the Legislature no less than would a statute law, if enacted expressly to levy a tax on the people for such purposes.

Your committee therefore are of opinion that so much of the statute laws of this State as prescribe and allow chaplains to be paid out of the public funds, for the performance of religious services or duties are unconstitutional and ought to be expunged from the statute books of this State. For which purpose the chairman of your committee some time since brought in a bill.

And your committee further report, that in several of the memorials referred to their consideration, there are other laws which are represented to infringe the civil and religious liberties of your constituents; the alledged unconstitutionality of which is sustained by such facts and arguments as leave no doubt on the minds of the committee that the exceptions of the memorialists to the several subjects of complaint, are well taken. But your committee not having time to draw up a detailed report on all the matters contained in the said memorials; and not being willing that the memorialists should be misled to believe that their petitions have been neglected, their complaints disregarded or treated with any disrespect, and thus their grievances remain unredressed, your committee have deemed it proper to recommend the adoption of the following resolutions.

DAVID MOULTON, Ch.  
M. MYERS.

*Resolved*, That all legislation on religion, other than pursuant to the constitution, to secure to "all mankind within this State without discrimination or preference" the free and unmolested enjoyment of the rights of opinion and free discussion, is unjust, unauthorized and unconstitutional.

***Resolved,*** That all existing laws by which any person within this State is coerced against his conscientious opinions to conform to the religious creeds or doctrines of others, are unjust, unconstitutional, nugatory, and ought to be repealed.

***Resolved,*** That to obstruct the public streets or highways with iron chains or other impediments to the free use thereof on Sunday or any other day, is an exercise of power without right, and ought to be interdicted under proper and effectual penalties.



**IN ASSEMBLY,**

**April 13, 1832.**

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**REPORT**

**Of the committee, on the erection and division of towns and counties, on the petition of sundry inhabitants of the county of Dutchess.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to which was referred the petition of sundry inhabitants of the county of Dutchess, praying for the erection of a new town from parts of Fishkill and Poughkeepsie,**

**REPORTED :**

**That by a reference to the census of 1830, it appears that the town of Poughkeepsie contained a population exceeding 7,000, and the town of Fishkill upwards of 8,000; and the petitioners represent, that the form of those towns as at present constituted, is irregular, and renders the transaction of public business extremely inconvenient to a considerable portion of their citizens, being obliged to travel a medium distance of eight miles to attend to it, and directly diverse from the channel of their ordinary business.**

**The territory of both towns is represented as extending twenty-two miles along the Hudson, and that the business of the inhabitants of this territory concentrates at three several points, and that the proposed division will give to the inhabitants of the new town, the facility of transacting their public business at the point where their ordinary business concentrates.**

**Due notice of the application has been furnished the committee, and no remonstrance against the erection of a new town having come before them, they are of opinion that the prayer of the petitioners ought to be granted. They have accordingly instructed their chairman to ask leave to bring in a bill.**



**No. 300.**

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**IN ASSEMBLY,**

**April 14, 1832.**

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**REPORT**

**Of the select committee, on the petition of the trustees of school district No. 2, in the city of Albany.**

Mr. Seymour, from the select committee, to whom was referred the petition of the trustees of school district No. 2, in the city of Albany, for the passage of a law authorising them to mortgage a lot, conveyed to them by the common council of said city, to enable them to raise a sufficient sum of money in addition to the sum already raised for that purpose, to enable them to erect a suitable building for a school house in said district,

**REPORTED :**

That by a resolution of the common council of the city of Albany, a building lot has been granted to the district, in value about one thousand dollars, and the trustees have circulated a subscription for monies to erect a school building for the school district, and they have at present a considerable sum subscribed for its erection, but not sufficient to finish the same. The memorialists ask for permission to mortgage the same for the balance which may be due thereon, for the following reasons: The school districts of the city have no power to vote a tax for the erection of a school-house, or for any other purpose: School district No. 2, contains a population of about three thousand inhabitants, and 873 children over five years, and under sixteen years of age. A school building sufficiently large, with three or four rooms, will cost nearly two thousand dollars, of which sum the district will realise about six hundred dollars, by the law of last session. This sum, with what they have raised by subscription, will enable them if they are permitted to mortgage the said lot, to

realise a sufficient sum to erect a suitable building for that district. With this view of the subject, the committee are of the opinion that the prayer of the petitioners is proper and ought to be granted, and have directed their chairman to ask leave to introduce a bill accordingly.

**No. 301.**

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**IN ASSEMBLY,**

**April 14, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the city of Schenectady.**

Mr. Gibson, from the select committee, to whom was referred the petition of sundry inhabitants of the city of Schenectady, praying for the passage of an act incorporating them and their associates for the purpose of supplying that city with good and wholesome water, ask leave to

**REPORT:**

That the petitioners represent, that they are desirous of associating themselves into a corporate body, for the purpose of supplying the city of Schenectady with water sufficient for the ordinary uses of the citizens, and also to supply cisterns with water to be located in different parts of the city, to be used for the extinguishment of fires. It also appears from the papers of the petitioners, that that city is now but illy supplied with that valuable article, water.

The petitioners have produced to the committee the evidence required by law of a notice having been duly published, setting forth the object of the petitioners in this application.

Your committee having fully examined into the merits of this application, are satisfied that the application ought to be granted, and have prepared and now ask leave to introduce a bill in accordance with the prayer of the petitioners.

**A. C. GIBSON.**



**No. 302.**

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**IN ASSEMBLY,**

**April 20, 1832.**

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**REPORT**

**Of the Secretary of State, relative to the execution of  
the duty assigned him by a resolution of the As-  
sembly of April 20, 1830.**

**STATE OF NEW-YORK, }  
SECRETARY'S OFFICE. }**

*Albany, April 20, 1832.*

**TO CHARLES L. LIVINGSTON,**

*Speaker of the Assembly.*

**SIR,**

Herewith is presented the report of the Secretary of State in  
relation to certain duties assigned him by a resolution of the Assem-  
bly, passed April 20th, 1830.

I am, with much respect,

Your obedient servant,

**A. C. FLAGG.**





# REPORT, &c.

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STATE OF NEW-YORK, }  
SECRETARY'S OFFICE. }

*Albany, April 18, 1832.*

The Secretary of State, who was required by a resolution of the Assembly of the 20th of April, 1830, in connection with Wm. B. Sprague and Aaron V. Fryer, "to examine the archives of that House, to select therefrom such original papers and documents as may be proper to be deposited in the office of the Secretary of State, and to deposit the same in that office; and to arrange the residue in chronological order, and place the same in cases already provided or to be provided for that purpose;"

## RESPECTFULLY REPORTS:

That in May 1831, he and Mr. Fryer fixed upon the 30th of May to commence the examination and selection of the papers referred to in the resolution, of which notice was given to Dr. Sprague, who declined executing the trust contemplated by the resolution. Mr. Fryer did not attend at the time appointed, or at any time thereafter, and the Secretary of State went through the examination of the archives of the Assembly from 1778, to 1831, a period of fifty-three years. This service occupied him from the 30th of May to the 19th of July, with the interruption occasioned by office duties which could not be delayed. The time actually occupied in selecting the papers was twenty-nine days, averaging five hours each day.

The papers selected and deposited in the Secretary's office, consist, generally, of

Petitions and all papers having relation to estates confiscated for an adherence to the enemy during the American revolution:

Petitions of revolutionary soldiers, and the reports and papers connected therewith:

Petitions of heirs, executors and administrators, in relation to the real estate of deceased persons:

The original annual and other messages of the several executives, made to the Assembly:

The reports of the Attorney-General :

The reports of the Surveyor-General :

The resolutions of other States in reference to amendments to the United States Constitution :

The petitions, generally, for claims against the State, for lands, for contracts on the canals, &c. &c.

And all documents which it was conceived could have any important bearing upon the history or interests of the State, or the rights of individuals, have been deposited in the Secretary's office.

The papers which it was not deemed material to deposit in the Secretary's office, were packed in boxes prepared for the purpose ; the packages being labelled, generally, in the same manner as they had been from year to year by the clerks of the Assembly. These papers fill ten boxes, each four feet long and twenty inches wide, and the boxes are placed in one of the committee rooms, numbered and labelled, so as to afford a convenient reference to the year, the general character of the petitions in the boxes, as well as of those in the Secretary's office. The papers deposited in the boxes at the Capitol consist, generally, of petitions, remonstrances and reports, in relation to

The division of towns and counties :

The incorporation of cities and villages :

The location of county buildings :

The incorporation of turnpikes and bridges :

The construction of canals, clearing rivers and declaring them public highways :

The erection of dams and wharves :

The encouragement of manufactories, and incorporations therefor :

Reports in relation to the militia and military stores :

The botanical physicians and licensed practitioners :

Petitions for divorces, the destruction of wolves and other noxious animals, changing names, &c. &c. &c.

The papers deposited in the Secretary's office were less than two twelfths of the whole mass, as they did not fill two boxes.

It is in contemplation to have these papers bound and indexed in a manner similar to the revolutionary documents; and for this pur-

pose they have been assorted, so as to bind up separately in chronological order, those which relate to revolutionary soldiers and claims, to the estate of deceased persons, to confiscated estates, and executive messages and correspondence. There is also a miscellaneous class, forming 13 volumes. The Secretary of State has been so much occupied with the more urgent duties of his office, that he has not yet had time to prepare all the Assembly documents for binding. The whole will constitute about fifty volumes, and only thirteen of these have been arranged so as to be given to the bookbinder.

Many of the Assembly documents deposited in this office are of a highly important character, either to individuals or the State: So much so, that it is desirable the Legislature should provide that exemplified copies of these papers shall be received in evidence in the courts of this State. A case has already occurred which made it important in settling the title to a house in Wall-street, to have one of the original petitions before a court in New-York; and a person was deputed for that purpose, and the original paper is necessarily out of the office for several weeks, and exposed to the casualties of transmission.

A single fact will shew the importance of some of the documents to the interests of the State, and the propriety if not necessity of making exemplified copies of them evidence in the courts of this State: A fact too, which exposes a most daring conspiracy to mutilate the records of the Supreme Court, with the intention of committing a gross fraud upon the State treasury. In the spring of 1831, a person presented to the Commissioners for extinguishing claims against the State, a claim of about thirty thousand dollars. It was presented by or in behalf of the representatives of a person who was attainted during the revolution, and whose lands had been taken and sold by the Commissioners of forfeiture: The claimant alleged that judgment in the Supreme Court had not been pronounced in the case, until after the signing of the preliminaries for the treaty of peace. In confirmation of his title to indemnity, the claimant presented to the commissioners a copy of a judgment record, duly authenticated by the clerk of the Supreme Court of the city of New-York, shewing that judgment was pronounced "*of the term of APRIL, in the seventh year of the Independence,*" &c. which answers to April 1783. The preliminary treaty, acknowledging the independence of the United States, was signed at Paris, on the 30th November, 1782, intermediately between the July and April terms, in the seventh year of the independence.

This case was so perfect on paper, as to leave very little room for argument ; and finally, the Comptroller and Attorney-General told the claimant they would make no compromise with him, and that he must seek his redress by ejecting the occupants ; that those only who had purchased of the State had any claims upon the treasury ; and that if dispossessed they could be indemnified by the Commissioners of the Land-Office, under sec. 6, title 5, of the first part of the Revised Statutes.

The applicant accordingly returned to New-York and commenced suits against several persons who were in possession of the confiscated property. Some of these persons employed Jno. L. Lawrence, Esq. to defend the suits ; and in his investigations of the title, Mr. L. discovered that several leaves had been cut from the minutes of the court, and that the judgment record, of which the claimant had obtained an exemplified copy, appeared to have been altered, by erasing "*July*" and inserting "*April*." The term of *July*, in the seventh year of the independence, was in 1782 ; the term of *April*, in the seventh year of the independence, was in 1783, after the signing of the treaty. The letter of Mr. Lawrence to the Comptroller, giving a history of this matter, is appended to this report, and marked A.

In going through an examination of the Assembly papers, the Secretary of State found a copy of the identical judgment record which had been mutilated, which copy was made in 1793, and certified by John McKesson, then clerk of the Supreme Court.

This copy shows that the judgment was pronounced as " of the term of *July*, in the seventh year of the independence ;" and also conclusively proves the forgery of the record, in erasing *July* and substituting *April*. The record having been altered, the clerk, of course, and without suspicion, gave an exemplified copy of the judgment record, which was presented to the Commissioners. A copy of the judgment record, found in the Assembly chamber, is appended to this report, and marked B. The original of this was procured and presented to the Assembly, with sundry other papers, in 1793 or 1794, to establish the claim of the widow of the attainted person to her dower in the property sold ; and to promote her interests, it became necessary not only to show the whole amount of the property sold, but also to show that the confiscation was perfected, leaving her no remedy in the courts ; and hence the presen-

tation to the Legislature of the authentic copy of the judgment record referred to, and which remained among the archives.

A copy and history of the document found by the Secretary of State, was made and transmitted to Mr. Lawrence; and the exhibition of this, with a knowledge of the other circumstances of the case, induced the respectable attorney who was employed by the pretended claimants to abandon the suits at once.

When Mr. Lawrence ascertained that several leaves had been subtracted from the minutes of the court, he made search among the representatives of Mr. M'Kesson, the clerk in 1782-3, and fortunately found with one of his grand nephews, the rough minutes of that period, containing the very entries which had been cut from the engrossed copy in the office. It appears by the letter of Mr. Lawrence to the Comptroller, (a copy of which is annexed to the paper marked A,) that the entries abstracted from the engrossed minutes, contained rules for judgment against a large number of individuals whose estates were confiscated; and that the whole number of entries exceed two hundred, and fill seven or eight pages of the rough minutes. This shews that the claim of 30,000 dollars, was only a single item in the fraudulent account which the conspirators hoped to establish against the treasury of the State.

Before closing this report, the undersigned ought perhaps to state, that in the fall of 1830, after the passage of the resolution relative to the Assembly papers, he commenced an examination of them in company with Mr. Fryer, and continued it for about five days, when he was called off by other duties. Mr. Fryer, as he understood, continued the examination for several days, but how many is not within his knowledge. A section was put into the supply bill of 1831, page 432, authorising the Comptroller to pay such sum for this service, as he might deem reasonable. The Comptroller offered to pay Mr. Fryer three dollars per day for such number of days as the Secretary of State would certify that he was employed in arranging the Assembly papers. As this certificate could only be given for five days, Mr. Fryer declined it altogether. The Comptroller then required Mr. Fryer to make an affidavit that he had actually been employed so many days, as, at three dollars per day, would make 180 dollars, the sum set up in his account; Mr. F. declined settling the account on these terms, and it is believed, received nothing under the section referred to.

Other than a reasonable allowance to Mr. Fryer for his services in 1830, there are no charges, except for 12 boxes, at \$2.50 each, amounting to \$30.63 cents, and three shillings for cartage. The Secretary would also recommend an allowance of ten dollars to Mr. Hays, for the assistance rendered by him at various times. The appropriation required to meet all the expenses incurred by the Secretary of State, is, therefore, 41 dollars.

All which is respectfully submitted,

A. C. FLAGG.

# DOCUMENTS.

( A. )

*First Letter of Mr. Lawrence.*

*New-York, May 16, 1831.*

SIR,

In making examinations on Saturday last at the office of the supreme court in this city, in the case of the attainer of \_\_\_\_\_ whose estate was forfeited for adherence to the enemy during the revolutionary war, I became satisfied that the record of attainer had been altered, so as to make the forfeiture apparently invalid, by virtue of the treaty of peace with Great Britain. Upon further investigation to day, in company with two clients, whose property is, or is threatened to be the subject of ejectment suits, founded upon Mr. \_\_\_\_\_ title, the previous impressions I had entertained were fully confirmed in the minds of us all. The circumstances which governed our conclusions are as follows :

1st. The practice seems to have been invariable, as far as I have traced it, to move for judgment against defendants who did not appear and traverse on the day of filing the sheriff's return of advertisement, having been made according to law. The sheriff's return applicable to \_\_\_\_\_ case, bears date on the second day of August, in the seventh year of our independence ; and a memorandum is made on a newspaper attached to the return, that judgment was rendered on the 3d day of August, 1782, which was the day after the return is dated. An endorsement by the clerk, on the paper which encloses the return, affords evidence that judgment was entered on the 3d day of August, 178—. The last figure of the year noted could not be ascertained, being worn off ; but it was no doubt the figure 2, as will be inferred from the facts hereafter stated.

2d. On turning to the book of minutes of the supreme court, of the 3d of August, 1782, one or more leaves seem to be deficient, and the marks of a knife on a neighboring leaf, leave no doubt that they have been cut out. No entry is found in the minutes of that day as they stand, corresponding with the memorandum and endorsement above mentioned.

3d. The advertisement contains the names of a large number of persons who appear to have been indicted by the grand jury of Albany, on the 28th April, 1781, by ten several indictments ; but no trace of the return of the sheriff, or of the entry of judgment in respect to any of them, was discovered by me, in the minutes of the July term of 1782.

4th. Mr. \_\_\_\_\_ was indicted, (by one of the ten indictments,) with three other persons. Two of these bore the name of \_\_\_\_\_, the other was a Mr. \_\_\_\_\_. The four are mentioned in the sheriff's advertisement. The indictments of the same

description, are, I find, usually endorsed with the date of the judgment rendered upon them. The indictment, in this particular case, I could not find. On looking at the respective records of the conviction of the two, \_\_\_\_\_ and of \_\_\_\_\_, the caption is found to be, in each case, of July term, in the seventh year of our independence, (say July term, 1782.) These correspond with the memorandum and endorsement mentioned under the first head; the 3d August, 1782, having been included in the July term.

5th. The record in \_\_\_\_\_ case is discolored at the top, as if some preparation had been daubed over that portion, inside and outside. The rest is free from similar stain. Its caption is of the term of *April*, in the seventh year of our independence, (say April, 1783, which is subsequent to the signing of the treaty.) The month, April, is written on the discolored part of the paper, and evidently, I think, on an erasure. The ink, in parts of the discoloration, has suspicious appearances. On referring to the minutes of April term, 1783, which appear to be entire, I discovered no rule for judgment against \_\_\_\_\_.

These facts, taken together, form a body of proof which seems to be irresistible. If they required additional force, it is afforded by the fact that, as far as my examinations have gone, in regard to the other persons named in the sheriff's advertisement, (who, as I have before mentioned, are numerous,) the judgment records are uniformly of July term, in the seventh year of our independence, corresponding to July term, 1782; which brings the attainders to a period antecedent to the signing of the treaty.

Under these circumstances, both my clients and myself, deem it our duty as citizens, to caution the Board of Commissioners (of which you are one) having power to settle claims for forfeited estates, not to make any payments for supposed interests in the property of Mr. \_\_\_\_\_. The crime which we believe to have been committed, is of so heinous a nature, as compels us to suggest the propriety of some investigation on the part of the State, which may detect the culprit, and lead to his punishment.

As the ejectment suits I have alluded to may involve considerable expenditure, and the State is interested in their result, I have to ask on the part of my clients, whose title is derived through the Commissioners for the sale of forfeited estates, that the Attorney-General, or some other counsel, on the part of the State, may aid in the defence. On this subject, you will oblige me by conferring with the Governor, whom I have not written to, not having at present time to do so. By shewing him this letter, you will save the necessity of my troubling him with a formal communication.

I am Sir,

Your obe'dt serv't,

JN. L. LAWRENCE.

Hon. SILAS WRIGHT, JR.

Comptroller, &c. &c.



*Second Letter of Mr. Lawrence.*NEW-YORK, *June 15th*, 1831.

DEAR SIR,

After my return to the city, I renewed my application at the Supreme Court office, for a search for the rough or original minutes for the year 1782, which I had before hoped might possibly be in Albany. Recollecting that the papers of John M'Kesson, Esq. the clerk of that time, had been in possession of his nephew, the late John M'Kesson, Esq. of this city, I ascertained upon inquiry, that those papers were in the hands of Mr. John M'Kesson, the grand nephew of the clerk. Upon application to the latter gentleman, he produced a book containing the minutes of the court from 1780 to 1783. Its contents leave no doubt of the fraud I suspected. The rule for judgment against ——— was entered on the *3d August*, 1782, as were rules for judgment against a very large number of persons whose estates were confiscated. The whole number of entries abstracted from the engrossed minutes, exceeds two hundred, and fills seven or eight pages of the rough or original minutes. At my request, Mr. M'Kesson deposited, on the 9th inst., the book of rough minutes, in the Supreme Court office of this city.

I should have written to you earlier on this subject, but have been prevented by slight illness and the calls of business.

I am Sir, very respectfully,

Your obedient servant,

JN. L. LAWRENCE.

HON. SILAS WRIGHT, JR.

*Comptroller, &c. Albany.*

( B. )

NEW-YORK SUPREME COURT, ss.

Of the term of JULY,\* in the seventh year of the Independence of this State.

Be it remembered, that on the twenty-eighth day of April, in the fifth year of the Independence of the State of New-York, the jurors of the people of this State, for the body of the county of Albany, did, upon their oath, present, that ——— late of the city of New-York, merchant, on the fourth day of August, in the year of our Lord, one thousand seven hundred and eighty, at the first ward of the city of Albany, in the county of Albany aforesaid, with force and arms, &c. did adhere to the enemies of this State, against the peace of the people of the State of New-York and their dignity.— And the said ——— having, according to the form of the act of the Legislature, entitled “An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this

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\* In the record at the clerk's office, “July” is erased, and “April” substituted.

State, and for declaring the sovereignty of the people of this State, in respect to all property within the same," being notified to appear and traverse the said indictment, and not having appeared and traversed within the time, and in the manner, in and by the said act limited and required: It is therefore considered, that the said ——— do forfeit all and singular the estate, both real and personal, whether in possession, reversion or remainder, held or claimed by him within this State, to the people of this State. Judgment signed this fourteenth day of July, MDCCLXXXIII.

ROBERT YATES.

A copy.

JOHN M'KESSON, *Clerk.*

**No. 303.**

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**IN ASSEMBLY,**

**April 23, 1832.**

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**REPORT**

**Of the committee on the Militia and Public Defence,  
on the bill from the Senate relative to Ellis's re-  
peating rifles.**

The committee on the Militia and the Public Defence, to whom was referred a bill from the Senate, authorising the Commissary-General to receive from the Ordnance Department of the United States, in lieu of the arms to be received as the quota due this State for one year, under the act of Congress, passed in April, 1808, patent repeating rifles, known as Ellis's repeating rifles,

**REPORT:**

That they have examined and used the repeating rifle, by way of experiment, and are of opinion that they would be eminently useful for the defence of fortifications, on ship board, or behind breast works, and that a limited number placed in the hands of a select corps of riflemen, to act on the flanks of an army in the field, might be used with great effect; but on examining the law of Congress referred to, they find that it was enacted for the express purpose of arming the whole body of the militia of the United States, and that 200,000 dollars is annually appropriated for the manufactory or purchase of arms and accoutrements, to be distributed to the several States and Territories, according to their respective populations; and until the whole of the militia are thus provided for and armed, they, or such proportion of them as remain unprovided for in this manner, are compelled by the laws of the respective States and Territories to provide arms and accoutrements at their own expense, under heavy fines in case of neglect so to do.

Your committee are of opinion, that the common musket and bayonet are the most suitable arms for the great body of the militia, because they are less expensive, more simple in their construction, and require less care to keep them in repair, lighter to carry on long marches, handier to load and discharge, and more effectual in battle when opposed to well drilled infantry, which compose the main body of all modern armies, and that if the line of our armies were composed of riflemen, they could not resist the charge of infantry armed with the musket and bayonet.

Your committee further report, that this State has already received from the ordnance department, and have now in store five hundred and twenty-one of Ellis's repeating rifles, which, in their opinion is a sufficient number of this sort of costly arms : and that it appears to your committee, that the Commissary-General of this State has received, during the last year, from the ordnance department, in lieu of small arms, twenty brass field pieces, and that about forty more are required for the use of the artillery companies now organized in this State ; and they are of opinion that if any exchange of arms is proper, the latter is the most advisable, and that it should be continued until all of the artillery corps are provided with field pieces.

M. MYERS, Ch'n.

**No. 304.**

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**IN ASSEMBLY,**

**April 17, 1832.**

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**REPORT**

**Of the select committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York, relative to lands in Queens county.**

**Mr. McKeon, from the select committee to which was referred the memorial of the mayor, aldermen and commonalty of the city of New-York, praying for the passage of an act relative to certain lands in Queens county,**

**REPORTED :**

**That, as appears by the memorial presented to the committee, with a view of establishing an alms-house farm to give employment to paupers and vagrants, and to aid in the support and maintenance of that class of persons and criminals committed to their charge, the memorialists have lately purchased about two hundred acres of land in Queens county, situated along the shore of the Sound or East River, opposite to Blackwell's Island. In adopting this measure, the memorialists have not only been influenced by a firm persuasion that agricultural employment would conduce to the health and moral improvement of those who are the usual tenants of the alms-house establishments, and a desire to commence on that plan immediately, but have looked forward to a period now near at hand, when the present establishment at Bellevue must, from the rapid advance of population, be in a settled and compact part of the city, and when it must be deemed desirable to remove the same beyond the intrusion of the idle and dissolute. The lands purchased on the Long-Island shore are, in the opinion of the memorialists, better situated for the purposes to which they are to be dedicated, than any other property which they could have obtained.**

The memorialists also represent that they are desirous to have their authority to send to the said farm such persons as may be proper objects, and to employ them there, be clearly recognized; and as it occasionally be expedient to send some of the prisoners from Blackwell's Island to the said farm, during the day time, and under proper precautions, to work in quarrying stone, or to perform other labor, not suited to the strength or ability of paupers, it would, in their opinion, be proper to make provision by law therefor.

To fulfil the important objects the memorialists have had in view, it is necessary that the authority and power of the magistrates and peace officers of the city of New-York, in respect to offences against the laws committed within the boundaries of the said land, should be extended thereto; and that all such offences should be triable in the courts of the city and county of New-York. It is proposed, therefore, to make the jurisdiction of the courts, magistrates and peace officers of the county of Queens and of the city and county of New-York respectively concurrent in this respect.

A bill embracing the objects of the memorialists has been prepared by the committee, and herewith submitted.

**No. 305.**

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**IN ASSEMBLY,**

**April 23, 1832.**

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**MESSAGE**

**From the Governor, transmitting the report of the Secretary of State, relative to the Maps and Revised Statutes sent to the Governors of the several States.**

**TO THE ASSEMBLY.**

**GENTLEMEN,**

The accompanying papers show that the act of March 18, 1830, directing a copy of Burr's Map and Atlas of this State to be sent to the several States in the Union, has been duly executed. The answers of the Executives of several of the States manifest high gratification at the liberality and courtesy of this State, in forwarding to them a present so rich and acceptable.

**E. T. THROOP.**

*Albany, April 21, 1832.*





## **REPORT**

**Of the Secretary of State, in relation to the Maps and Revised Statutes sent to the Governors of the several States.**

**STATE OF NEW-YORK, }  
SECRETARY'S OFFICE. }**

*Albany, Feb. 8, 1832.*

**To ENOS T. THROOP,  
Governor of the State of New-York.**

**SIR,**

In conformity with your direction, and the laws and resolutions of the Legislature, there has been transmitted from this office to the Governors of the several States in the Union, three copies of the Revised Statutes, and one copy of Burr's Map and Atlas of this State.

The boxes for Maine, New-Hampshire, Massachusetts and Rhode-Island, were forwarded from this city by the eastern packets, and the receipt of them has been acknowledged. Those for Connecticut were forwarded by private conveyance, and an answer has been received from the Secretary of State. Those for Vermont were forwarded by way of Burlington, and although no answer has been received from the Governor, it is presumed they reached their destination, as a bill has been presented and paid for their delivery at the seat of government. Those for Ohio were forwarded by way of the Erie and Ohio canals, and the acknowledgment of their receipt by the Governor is among the transcripts of letters herewith given. The boxes for sixteen States, to wit, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, Georgia, Kentucky, Alabama, Tennessee, Illinois, Indiana, Mississippi, Missouri and Louisiana, were placed in charge of Alley & Trimble, of New-York, to be forwarded to the Governors of the States above named. Letters have been received from all these sixteen States, excepting Pennsylvania, Delaware, Virginia, Kentucky, Tennessee and Indiana.

The Statutes and Maps in each case were accompanied by a letter, and a copy of the law and resolution under which they were presented, and a duplicate in each case was sent to the Governor by

mail, copies of which are given in the paper marked A. The paper marked B. is a transcript of the letters from the Executives of the several States, acknowledging the receipt of the Maps and Statutes.

The paper marked C. contains copies of the accounts which have been paid. There may be other accounts which will hereafter be presented. To defray these charges, \$200 have been drawn from the treasury, out of which the accounts above referred to, amounting to \$82.43 cents, have been paid, and the residue, \$117.57 cents, is deposited in the Commercial Bank of this city.

All which is respectfully submitted,

A. C. FLAGG.

## DOCUMENTS.

( A. )

*Copy of a Letter from the Secretary of State, accompanying the maps, &c. transmitted to the Executives of the different States.*

STATE OF NEW-YORK, }  
SECRETARY'S OFFICE. }

*Albany, May 13, 1831.*

*To the Governor of the State of Missouri.*

SIR,

In compliance with the annexed resolution of the Legislature of this State, there has been forwarded to the Governor of Missouri, one box containing a copy of Burr's atlas, and another containing a map of the State of New-York.

There is also another box containing three sets of the Revised Statutes of this State, there being three volumes in each set; and the same box contains three volumes of the session laws for each of the years 1829 and 1830.

You will be pleased to acknowledge the receipt of the boxes, and whether they came to you free of charge, as it is designed to transmit them at the sole cost of this State.

I am, with much respect,

Your obedient servant.

A. C. FLAGG.

STATE OF NEW-YORK, }  
*In Assembly, September 22, 1828.* }

*Resolved*, (if the Senate concur herein,) that the Governor be requested to transmit, at the expense of the State, to the Governors of Virginia and Missouri, each a superior bound copy of the map and atlas of this State, compiled by David H. Burr, whenever the same shall have been published, for the use of those States, respectively.

By order,

F. SEGER, *Clerk.*

*In Senate, September 22, 1828.*

*Resolved*, That the Senate do concur with the Assembly, in their said resolution.

By order,

JOHN F. BACON *Clerk.*

STATE OF NEW-YORK, }  
 SECRETARY'S OFFICE. }

*Albany, May 13, 1831.*

*To the Governor of the State of*

SIR,

There has been forwarded to your direction, in compliance with the statute, a copy of which is herewith annexed, one long box, containing a map of this State, and one other box containing Burr's atlas of maps of the several counties in this State.

There is also another box, containing three sets of the Revised Statutes of this State, there being three volumes in each set; and the same box contains the session laws of this State for the years 1829 and 1830; being three copies of laws of each session.

You will please to acknowledge the receipt of the several boxes, and state whether they came free of charge; as it is designed, as far as it can be done, to transmit them at the sole charge of this State.

I am, with great respect,

Your obedient servant,

A. C. FLAGG.

The boxes are placed in charge of Alley and Trimble, N. York.

#### CHAP. 81.

#### *An Act concerning the Map and Atlas of this State.*

Passed March 18, 1830.

*The People of the State of New-York, represented in Senate and Assembly, do enact as follows:*

§ 1. The acting governor is hereby required to carry into effect the joint resolution of the Senate and Assembly, adopted on the twenty-second day of September, one thousand eight hundred and twenty-eight, authorising the Governor to transmit, at the expense of the State, to the Governors of Virginia and Missouri, each a superior bound copy of the map and atlas of this State, compiled by David H. Burr, whenever the same shall have been published.

§ 2. The acting governor is hereby authorised to transmit to the office of the Secretary of State of the United States, a superior bound copy of said map and atlas, and to each of the Governors of the States in the Union not mentioned in the first section of this act, for the use of their respective States, a copy of the said map and atlas of this State, out of the number to be furnished by the said David H. Burr, in pursuance of the act entitled "An act to provide for the publication of the map and atlas of this State," passed October 17, 1827.

§ 3. The sum necessary to carry this act into effect, is hereby appropriated for that purpose; and shall be paid by the treasurer, on the warrant of the comptroller.

§ 4. This act shall commence and take effect from and immediately after the passage thereof.

( B. )

*Transcripts of the Letters from the Executives of the several States,  
acknowledging the receipt of the Maps and Statutes.*

## STATE OF MAINE.

SECRETARY OF STATE'S OFFICE, }  
Portland, June 14, 1831. }

A. C. FLAGG, ESQUIRE,  
*Secretary of the State of New-York.*

SIR—I have the honor to acknowledge the receipt of the several boxes mentioned in the letter which accompanied them. Their contents have been examined, and found to agree with the invoice, excepting in one particular,—the laws of your State for 1828, which had before been received, were sent instead of those of 1830. I have the pleasure further to inform you, that the articles before mentioned, received no injury from transportation, and that they were delivered free of charge to this State.

And I am directed by the Governor to express to you, in behalf of the State, the grateful sense which is entertained for the elegant and valuable map and atlas which have been forwarded to this government by the direction of the Legislature of New-York.

I am, very respectfully,

Your obedient servant,

ROSCOE C. GREENE,  
*Secretary of State.*

## STATE OF NEW-HAMPSHIRE.

SECRETARY'S OFFICE, June 13, 1831.

A. C. FLAGG, Esq.  
*Sec. State New-York.*

SIR—In behalf of his Excellency Gov. Dinsmoor, I would inform you that there has been received at this office, free from expense, a map of the State of New-York, Burr's atlas of maps of the several counties, and three sets of the Revised Laws of New-York, and the Session Laws, all as mentioned in your communication of the 13th ulto.

With great respect, Sir,

Your obedient servant,

RALPH METCALF.

## COMMONWEALTH OF MASSACHUSETTS.

SECRETARY'S OFFICE, June 2, 1831.

A. C. FLAGG, Esq.  
*Secretary of New-York.*

SIR—I am directed by the Governor of this Commonwealth, to acknowledge the receipt of the Map of New-York, the Atlas, the Revised Statutes, &c. in three boxes, agreeably to the memorandum

therewith transmitted. And he also desires me, in behalf of the government, to return their thanks for these valuable presents.— They were received without charge to the State.

I am, Sir, respectfully,

Your obedient servant,

EDWARD D. BANGS,  
Secretary.

**EXECUTIVE DEPARTMENT—STATE OF RHODE-ISLAND.**

*Providence, June 19, 1831.*

A. C. FLAGG, Esq.

SIR—On Saturday the 11th instant, was handed me your letter, of 13th of May, with a copy of a statute concerning the Map and Atlas of your State annexed. The boxes therein mentioned, with their contents, were received the day before, free of charge and in perfect order.

The General Assembly of this State will meet next week, when I shall have the honor of communicating the same to them.

I am with great respect,

Your obedient servant,

LEMUEL H. ARNOLD,  
Governor.

**STATE OF CONNECTICUT.**

*SECRETARY'S OFFICE, Feb. 18, 1830.*

SIR—

It is with much satisfaction I acknowledge the receipt at this office from you, of Burr's Atlas and Map of the State of New-York, three sets of the Revised Statutes, and three copies of the Session Laws of 1829 and 1830, all free of charge.

I am very respectfully,

Your obedient servant,

THOMAS DAY.

AZARIAH C. FLAGG, Esq.

*Secretary of State.*

**VERMONT.**

HON. A. C. FLAGG,

*To Ira Day & Co. Dr.*

To transporting three boxes, containing the Revised Statutes, Atlas and Map of the State of New-York, (directed to the Governor of Vermont,) from Burlington to Montpelier, ..... \$2.00

DEAR SIR—

Agreeable to the direction of your card, nailed upon the outside of the several boxes, we send you the above account, on the receipt of which you will please send us the money.

Yours respectfully,

IRA DAY & Co.

per Erastus Coleman.

*Montpelier, August 12, 1831.*

OFFICE OF SECRETARY OF THE STATE OF  
NEW-JERSEY.

*Trenton, July 12, 1831.*

A. C. FLAGG, Esq.

*Secretary of the State of New-York.*

SIR—The three boxes transmitted by you to the Governor of the State of New-Jersey, containing a Map of the State of New-York, Burr's Atlas of Maps of the several counties thereof, and three sets of the Revised Statutes and the Session Laws for the years 1829 and 1830, have been received at this office. They came to hand safely, and without charge.

Very respectfully,

Your obedient servant,

JAMES D. WESTCOTT.

COUNCIL CHAMBER.

*Annapolis, July 26th, 1831.*

SIR—

I have to acknowledge the receipt of yours of the 13th of May last, to the Governor of this State, together with the three boxes therein mentioned, in good order, and containing the splendid Map of the State of New-York and Atlas of Maps of the several counties of the State, and also the three copies of the Revised Statutes, and Session Laws of the said State of the years 1829 and 1830, as mentioned in your letter.

For these highly interesting and valuable evidences of the public spirit and liberality of New-York, evinced as well in the works themselves, as in the manner of disposing of them, she is eminently entitled to the thanks of her sister States.

Very respectfully,

Your ob't. serv't.

THO. CULBRETH,

*Clerk of the Council.*

A. C. FLAGG, Esq.

EXECUTIVE DEPARTMENT, N. C.

*Raleigh, October 25th, 1831.*

A. C. FLAGG, Esquire,

*Secretary of the State of New-York.*

By direction of the Governor, I inform you that we have received at this department, free of any expense, the three boxes, containing the Map and Atlas and Revised Statutes of New-York, as mentioned in your letter of the 13th of May last.

Yours, very respectfully,

JNO. B. MUSE,

*Private Secretary.*

## EXECUTIVE DEPARTMENT, S. C.

*Charleston, July 18, 1831.*

SIR—I am directed by Governor Hamilton, to inform you that he has received in safety, and *entirely free of expense*, three boxes of Maps and Statutes from New-York, according to your letter and the accompanying bill of lading. For the very handsome manner in which they have been sent, the Governor returns to you his best thanks, and at the same time begs to be informed, whether these articles are intended as a present to the Legislature of the State, or to the Executive Department, as your letter does not indicate for which purpose they are designed.

Very respectfully, y'r. ob't.

LEWIS CRUGER,  
*Executive Secretary.*

A. C. FLAGG, Esq.  
*Sec. of State New-York.*

## EXECUTIVE DEPARTMENT—GEORGIA.

*Milledgeville, 15th August, 1831.*

SIR—

I have the honor to acknowledge the receipt (free of charge) of three boxes containing a Map of the State of New-York, Burr's Atlas of Maps of the several counties of that State, and three sets of the Revised Statutes, together with three copies of its laws passed at the sessions of its Legislature in 1829 and 1830.

The Map and Atlas give a splendid and accurate view of the natural and improved advantages of the territory of the great State, whilst the Revised Statutes prove the wisdom with which its Legislature secures to her people the benefits of civil liberty and an enlightened administration of government. The munificence of the State of New-York in presenting these valuable works to her sister States, is duly appreciated by Georgia.

Very respectfully,

Yours, &amp;c.

GEORGE R. GILMER.

A. C. FLAGG, Esq.

## STATE OF LOUISIANA—EXECUTIVE DEPARTMENT.

*New-Orleans, 3d August, 1831.*

SIR—I have the honor to acknowledge the receipt of your letter of the 13th of May last, advising this Department of the transmission of a Map and Burr's Atlas of Maps of the counties and State of New-York, also the Revised Statutes and three copies of the laws of the sessions of 1829 and 1830, of said State. All of which have been duly received, and free of charge to the State of Louisiana.

I have the honor to be,

Very respectfully, &amp;c. &amp;c. &amp;c.

GEORGE A. WAGGAMAN,  
*Secretary of State.*

AZARIAH C. FLAGG, Esq.



**STATE OF ALABAMA,  
EXECUTIVE OFFICE.**

*Tuscaloosa, 1 Nov. 1831.*

SIR—I have the honor to acknowledge the receipt of three boxes containing a Map of the State of New-York, Burr's Atlas of Maps of the several counties in said State, and the Revised and Session Laws thereof free of charge.

I have the honor to be, very

Respectfully your ob't. serv't.

SAM'L. B. MOORE.

A. C. FLAGG, Esq.

**EXECUTIVE OFFICE—MISSISSIPPI.**

*Jackson, November 29th, 1831.*

*To the Hon'ble the Secretary of State  
of New-York.*

SIR—

I have the pleasure to acknowledge the receipt of your communication under date of the 14th of May last, accompanied by three boxes, viz: one containing a Map of the State of New-York, one Burr's Atlas of Maps of the several counties in said State, and the other, three copies of the Revised Statutes and three copies of the Session Laws of said State of New-York, for the years 1829 and 1830, all of which were delivered at the city of Natchez in this State free of expense. Permit me sir, through you, to tender the thanks and grateful acknowledgments of the State of Mississippi to the State of New-York for this valuable present.

With great respect,

Your most ob't. serv't.

GERARD C. BRANDON.

**STATE OF OHIO—COLUMBUS.**

*EXECUTIVE OFFICE, July 12, 1831.*

A. C. FLAGG, Esq.

SIR—

Your letter of the 18th of May last was duly received, and the three boxes mentioned therein, viz: that containing a *Map of New-York*, that containing *Burr's Atlas of Maps* of the several counties of that State, and another containing three sets of the *Revised Statutes of New-York*, as well as the Session Laws of that State for the years 1829 and 1830 have all been received at this office in good order, *free of any charge* whatever. The Map and Atlas are elegantly executed, and will form a very valuable acquisition to our State library. For this marked courtesy of the people of the State of New-York, I take much pleasure in tendering the thanks of my fellow citizens, who will, I trust, cordially reciprocate the favor whenever it may be in their power.

The Session Laws of New-York, for the year 1831 have all been received at this office. As soon as our laws *revised the last session*

*of the Legislature, shall have been printed, we shall forward copies to the executive of New-York.*

I am very respectfully,  
Your ob't. serv't.

D. M'ARTHUR.

### EXECUTIVE DEPARTMENT.

VANDALIA, Illinois, 15 Sep. 1831.

SIR—I am instructed by his excellency, John Reynolds, the Governor of this State, to acknowledge the receipt of the three boxes mentioned in your letter of the 13th of May, in which were found

A large Map of the State of New-York;

A book containing Maps of the several counties;

Three sets of the Revised Statutes;

Three copies of the laws 51st session, 1828, and

Three copies of the laws 51st session, 2d meeting 1828, and 52d session 1829.

The boxes were delivered at this place free of charge.

I have the honor to be, Sir,

Your most ob't. serv't.

WILLIAM TURNER.

A. C. FLAGG, Esq.

### STATE OF MISSOURI.

CITY OF JEFFERSON,

January 13, 1832.

SIR—Your favors of the 13th and 17th of May last, addressed to the Governor of this State, and advising him that a "box containing a Map "of the State of New-York," another containing an "Atlas of the Maps of the several counties," and a third containing three sets, three volumes each, of the "Revised Laws" with the "Session Laws of 1829 and 1830," were received in the ordinary course of the mails. It was deemed advisable to delay answering the letters, until the arrival of the several articles forwarded. In pursuance of the directions of the executive, I have now the pleasure to acknowledge, that a neat and handsomely executed Map of the State of New-York, a superior bound splendid copy of an Atlas of the Maps of the several counties in the State, and three sets, three volumes each, of the Revised Laws, with the Session Laws of 1829 and 1830, have been received "free of" any, except a very inconsiderable "charge," and entirely free from damage.

A resolution of the Legislature of the State of New-York accompanying the one, and an act the other of the above letters, were received at the same times. The resolution *requests* and the act *authorises* "the Governor to transmit, at the expense of the State, to the Governors of Virginia and Missouri for the use of their respective States, each a superior bound copy of the Map and Atlas of the State of New-York." The Governor is not insensible of this marked attention to the State over which he presides, and feels the warmest regard and entertains the highest respect for the distinguished

member of the confederacy which has bestowed it. He asks the favor of presenting through yourself, to his excellency the Governor, and through him to the Legislature of the State of New-York, his thanks and grateful acknowledgements for the honor conferred upon this State, and to say that it will afford him pleasure to communicate to the next Legislature, the receipt of the Map and Atlas, together with the very flattering manner in which they were presented.

A mutual interchange of the literary productions of the several States, is not less calculated to promote good feeling and friendship between the different members of the confederacy, than to advance the acquisition of knowledge and extend the progress of science.

I have the honor to be

Very respectfully your ob't. serv't.

JOHN C. EDWARDS,

*Sec. of State,*

*State Missouri.*

A. C. FLAGG, Esq.

*Sec. of State,*

*State of N. Y.*

SECRETARY OF STATE'S OFFICE.

*Milledgeville, 7th January, 1833.*

SIR—

I have the honor herewith to present to your Excellency, a copy of a resolution adopted at the late session of the General Assembly of the State of Georgia. In return for the distinguished mark of attention, shewn by the State of New-York to the State of Georgia, I beg you to accept the volumes which accompany this letter; trifles in themselves to be sure, but receiving great value from the occasion thus presented of using them, to express, though feebly, the high regard Georgia entertains for the character of New-York, and the estimation in which the intelligence and patriotism of her people are held.

I have the honor to be

Very respectfully,

EVERARD HAMILTON,

*Sec'y. of State.*

His Excellency

ENOS T. THROOP,

*Governor of New-York.*

*In Senate, 24th December, 1831.*

The committee to whom was referred the Governor's communication covering an act of the State of New-York, presenting to this State a Map and Atlas of New-York, and also three sets of a compilation of her laws, have had the same under consideration, and with a view that Georgia may carefully reciprocate the attention of a sister State on an occasion like the present, they beg leave to offer the following:

*Be it resolved,* That his Excellency the Governor be requested to have selected two of the best Atlases and latest Maps of this State,

together with three sets each, of Princes and Foster's Digest, and Dawson's compilation of the laws of this State of the best edition, and cause the same to be transmitted to the executive of the State of New-York at the expense of this State.

*Resolved*, That his Excellency the Governor be requested to direct the Secretary of State to accompany the same with a copy of these resolutions, expressing the gratification of this State for the attention of the State of New-York, and a disposition on our part cordially to reciprocate on all similar occasions.

Read and agreed to.

THOMAS STOCKS, *President*.

Attest.

IVERSON L. HARRIS, *Secretary*.

*In the House of Representatives, 24th December, 1831.*

Read and concurred in.

ASBURY HULL, *Speaker*.

Attest.

WM. C. DAWSON, *Clk*.

Approved December 26th, 1831.

WILSON LUMPKIN, *Governor*.

SECRETARY OF STATE'S OFFICE.

*Milledgeville, Georgia, 7th January, 1832.*

The above and foregoing is a true copy from the book of resolutions in this office, with the great seal of the State affixed thereto.

EVERARD HAMILTON,  
*Secretary of State.*

( C. )

The State of New-York,  
1831.

*To Lachlan McPherson, Dr.*

To making 23 boxes, to contain Burr's State Map for the several States, 32 cents each,.....	\$7 36
To making 23 boxes for Burr's Atlas to be sent to the several States, at 32 cents each box,.....	7 36
To making 23 boxes to contain three sets each of the Revised Statutes for the several States, 3s. each box,....	8 63
Cartage of three boxes to Eagle Tavern for the Governor of Connecticut, containing the Revised Laws and Maps, Above paid under chap. 81, 1830.	37½
To one box to send the Revised Statutes to the Philadelphia Atheneum, .....	37½
To one for Boston Atheneum, .....	37½
	<hr/>
	\$24 47½

Received the amount of the above bill.

LACHLAN MCPHERSON.

Albany, May 20, 1831.

A. C. FLAGG, Esq.  
Secretary of State,

Dr. to Thaddeus Joy.

For freight of three boxes books and maps to the Governor of Ohio at Columbus, as follows,

3 boxes weighing 98 pounds.

Cartage, .....	\$0 25
Freight to Buffalo, .....	1 00
“ from Buffalo to Sandusky, .....	50
“ “ Sandusky to Columbus, ...	1 50

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\$3 25

Received of the Treasurer of the State of New-York, three dollars and twenty-five cents in full of the above account.

THADDEUS JOY.

Albany, May 20, 1831.

Albany, June 18, 1831.

State of New-York,

To owners of Boston Packets, Dr.

To freight and charges of 3 boxes to each of the Governors of Massachusetts, Rhode-Island, New-Hampshire and Maine, . \$12 48

Received payment;

L. GAY, Agent Boston Packets.

The State of New-York,  
1831,

To Ira Day &amp; Co.

August 8, To transporting 3 boxes, containing Burr's Atlas and Map and the Revised Statutes, for the Governor of Vermont, from Burlington to Montpelier, .....

\$2 00

Received of A. C. Flagg, two dollars in full of the above account.

A. H. G. WELTON, Agent.

A. C. FLAGG, Esq.  
Secretary of State,

To Alley & Trimble, Dr.

June 29, To cash paid freight from Albany on 48 boxes Maps, &c. 3 each for the Governors of 16 States, \$12, cartage and labor 63 cents, .....

\$12 63

30, Freight per Amelia on 3 boxes for Gov. of S. C.

\$1, portorage 13 cents, .....

1 13

“ Freight per Florian on 3 boxes for Gov. of Georgia,

\$1.50, portorage 13 cents, .....

1 63

July 2, Freight per Bolivar on 21 boxes to New-Orleans,

\$2.10, cartage 25 cents, .....

2 35

“ Freight per transportation line to Trenton, .....

1 50

“ “ “ Philadelphia, .

1 50

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Carried forward, .....

	Brought forward, .....	
July 2,	Freight per Swan to Petersburg, .....	\$1 00
"	" Central to Annapolis, .....	1 00
"	" Planter to Richmond, .....	1 00
"	" transportation line to Philadelphia for Gov. Delaware, .....	1 50
"	" " Gov. Alabama, .....	1 00
"	J. Hagan, expenses for Gov. Alabama, .....	3 81
"	Expenses to Philadelphia on 3 boxes to Harris- burgh, .....	1 38
"	Paid A. Harris, forwarding boxes from Dover, ..	5 00
"	" Scott & Shapter, forwarding 3 boxes to Gov. Georgia, .....	3 05
	Cartage 3 loads, .....	75
		<hr/>
		\$40 23

January 9, 1832, Received payment in full,  
ALLEY, LAWRENCE & TRIMBLE.

#### RECAPITULATION.

Lachlan McPherson's bill, .....	\$24 47½
Owners of Boston packets, .....	12 48
Thaddeus Joy's bill, .....	3 25
Ira Day & Co's. bill, .....	2 00
Alley & Trimble's bill, .....	40 23
	<hr/>
	\$82 43½

**No. 306.**

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**ORATION**

**DELIVERED ON THE CENTENNIAL ANNIVERSARY**

**OF THE**

**BIRTH-DAY OF WASHINGTON,**

**IN THE CITY OF ALBANY, ON THE TWENTY-SECOND OF FEBRUARY, 1832,**

**BY THE**

**HON. ORAN G. OTIS,**

**OF THE ASSEMBLY,**

**ON THE APPOINTMENT OF THE LEGISLATURE OF NEW-YORK.**

---

**ALBANY:**

**PRINTED BY CROSWELL, VAN BENTHUYSEN AND BURT.**

**1832.**





## REPORT

**Of the select committee appointed to make arrangements for the celebration of the centennial anniversary of the birth-day of Washington.**

**Mr. M'Keon, from the select committee appointed on behalf of the Assembly to make arrangements for the celebration of the centennial anniversary of the birth day of Washington,**

**REPORTED,**

**That the joint committee of both Houses addressed a letter to the Honorable ORAN G. OTIS, who had been selected to deliver an Oration on the occasion referred to, requesting a copy of the same. They herewith present a copy of the correspondence and oration, and recommend the adoption of the following resolution.**

***Resolved, (if the Senate concur) That the correspondence and oration be entered on the journals, and that four times the usual number of copies of the oration be printed.***

***In Assembly, April 23, 1832.***

***Resolved, That this House do agree to the said resolution.***

***By order,***

**F. SEGER, Clerk.**

***In Senate, April 23, 1832.***

***Resolved, That the Senate do concur in said resolution.***

***By order,***

**JOHN F. BACON, Clerk.**



## CORRESPONDENCE.

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*Albany, February 23, 1832.*

HON. ORAN G. OTIS,

SIR—

We, the undersigned, appointed a joint committee on behalf of the Senate and Assembly of the State of New-York, to make arrangements for the celebration of the Centennial Anniversary of the birth-day of Washington, respectfully solicit you to favor us with a copy of the Oration delivered by you on the 23d inst.

We have the honor to remain

Your obed't serv'ts,

LEVI BEARDSLEY,	}	<i>Of the Senate.</i>
JOHN BIRDSALL,		
JOHN McLEAN, JUN.		
JOHN McKEON,		
E. HOWELL,	}	<i>Of the Assembly.</i>
JAMES B. SPENCER,		
AARON REMER,		
PH. MAXWELL,		

*Albany, February 24th, 1832.*

GENTLEMEN—

In compliance with your request, a copy of the Address is transmitted herewith.

Very respectfully,

Your obed't serv't,

ORAN G. OTIS.

TO LEVI BEARDSLEY,	}	<i>Committee of Senate and Assembly, &amp;c.</i>
JOHN BIRDSALL,		
JOHN McLEAN, JUN.		
JOHN McKEON,		
E. HOWELL,		
JAMES B. SPENCER,		
PH. MAXWELL,		

1. The first part of the document is a list of names and addresses of the members of the committee.

2. The second part of the document is a list of names and addresses of the members of the committee.

3. The third part of the document is a list of names and addresses of the members of the committee.

4. The fourth part of the document is a list of names and addresses of the members of the committee.

5. The fifth part of the document is a list of names and addresses of the members of the committee.

6. The sixth part of the document is a list of names and addresses of the members of the committee.

## ORATION.



**FELLOW-CITIZENS !**

We have come together, not to mourn the death of an illustrious individual, but to rejoice, in the opportunity of his birth, the felicity of his life, and the immortality of his fame. His dust has gone to dust, by the common law of our being, but the nobler portion still remains, uninjured by the accidents of mortality, and unimpaired by the lesions of time. The truth of his principles, the power of his name, and the splendor of his career, are still in full life and action, elevating and improving, not only, our condition, but the condition of the world—illustrating not only the dignity of his own character, but that of his species.

The event we celebrate, has had and will have its influence on the general destiny, and not only shall we rejoice, but nations yet unborn, shall bless the hour that gave him to mankind. Strong and fervid as are the feelings of gratitude and admiration which now swell our bosoms in the contemplation of the virtues, the genius, and the achievements of him whom we have met to honor, they are not exclusively ours—millions in other climes not blessed like this, are offering up their love, their homage and their hopes, to the final results of that course, of which he was the great pioneer. And the time will yet come, when all the nations of the earth, in the undisturbed enjoyment of their *natural* rights, shall hail him as a brother, and bless him as a father.

He was born for the world—not for us merely, but for the family of mankind. The *action* of his life was laid amidst the scenes of this new discovered land, this remote covert of the world ; but the *denouements* of his career, were to affect the oldest dynasties of the earth, and annihilate their most ancient prescriptions. His efforts were confined to three millions of people—scarcely a fraction of the human race, but the consequences of these efforts were to be acknowledged, in the final emancipation of the world. The

fervor of the love for liberty which he excited and controlled, was, like the small lump of leaven, eventually, to pervade the whole mass. Like the sun in the sky, though fixed in its sphere, its effulgence is unstinted, is shed over all, and kindles to life wherever a ray of it rests.

The occurrence of his birth, was appointed to take place, during the embryo of those events, which were to change the face of society and reorganize the world. The political condition of the nations, was well nigh, as peculiar and full of omen at the time of his entrance into life, as their moral, at the advent of *Him* who was at once the model and the *Saviour* of the human race. For nearly six thousand years, had the old world in vain essayed the discovery of the true principles of the social compact,—Though like the mysteries of the true religion, they were seen in dim and distant prospect by a favored few ; their full revelation was delayed, until the discovery and settlement of this new portion of the world.

In the dreamy abstractions of philosophy, the possible existence of a free community, had been fancied—where good laws might be made by the wisdom of the whole, and enforced by the general consent,—where the only distinctions were those of merit, and the only rewards those of the public esteem,—where the over-reaching few might be held in check by the force of law and opinion, and individual freedom be restrained only by the limits of the moral code. But the vision was apparently too beautiful for truth, though too noble for fiction—too remote for experiment, though full of desire. The monitions of the past took away hope from the future, and left only the evils of oppression as a solid expectation to mankind.

Even the advancement of society had not explained the principles or developed the means of liberty. In countries famed for their policy, their prowess and their power, the slavery of ages remained in its strength untouched by the improvements gathering around it. And the towers of despotism rose on their deep and dark foundations among the people, frowning from summits encircled by the blaze of science and the glory of the arts. The natural advantages of the people over their enemies, were made to operate against themselves, and the very power which could have crushed their oppressors was used to enforce their own degradation. The order of nature seemed reversed—the weak ruled the

strong—the few overcame the many, and the true possessors of sovereign power truckled to the bauble ensigns of authority, and yielded up their energies, a timid oblation, to the knaves and fools, who luxurated upon their credulity.

The destiny of the world seemed fixed, beyond the hope of better change. So firmly established was the doctrine of passive obedience, and so unquestionably divine the authority to enslave, that saving here and there an intestine commotion, an occasional shaking of their chains, the nations of the earth lay still in their apathy, and tamely submitted to the lash of their oppressors.

It is true, that in a few instances, the general tenor of the history of mankind was broken in upon. High and noble efforts had been made to assert the dignity of our common nature, and shew that man was not necessarily a slave. Greece and Rome successively undertook the experiment, and sought to falsify the experience of all previous time, by exhibiting in their own example, the evidence of their capacity, to govern themselves. For a time the splendor of their course seemed likely to illustrate the destiny of our race. But time eventually proved the fallacy of the means they used for success. The glory of their career was extinguished in their own essential grossness, and the tyrannies which afterwards arose, scorned the folly of their attempts, and laughed at the fanaticism which could believe in their practicability. Their light, like that of the borealis, adorned the night, but did not overcome it. Their institutions did not define the difference between liberty and licentiousness, and left alike unguarded, the ambition of their popular chiefs and the aberrations of the popular will. Excess of liberty, vibrated to the extremes of anarchy, and constraint ended in tyranny.

They had not devised a system, where all were the guarantors of the rights of each and each, the guardian of the rights of all—where the interests of the many were protected against the encroachments of the few, and where the welfare of the state was consulted in the happiness of the citizen.

From these ancient times, down to the discovery of this continent, the evidence of whose existence, like that of Atlantis, was only in fable, the history of the world is but one record of its oppressions. One common thrall spread over the nations, and the gilded oppressor, every where sat on the neck of the slave.

Passing by the other governments of the old world, we find even that England, who on this point was in advance of her species, had not been able to secure the prize. She had warred with her nobles, dethroned her kings, and bathed her soil in the blood of her children—but in vain. She only triumphed over some of the rougher and more prominent obstacles to her freedom, which the dark crudities of a former age had entailed upon her, leaving an overbearing aristocracy, hereditary offices, a union of church and state, intolerance of religious opinion, and the smothered voice of a disfranchised people, to degrade and curse her institutions.

Such had been the history of mankind, and such its unhappiness, when WASHINGTON was born. But a new era was beginning to dawn—a new order of events was coming upon the world—a new dispensation among the politics of the earth. Never before, had that peculiar conjuncture of affairs existed, to which his birth and life—his genius and his principles—would have been so opportune and so peculiarly conformed. The existence of this continent had then only been known for 240 years. In the Providence of ages, it had been preserved until then, a virgin spot—an unpolluted land—the Bethlehem of the world—free from the arts and the arms, the usages and customs—the trammels and the crimes, by which the old world was enslaved.

Only one hundred and twenty-five years before his birth, was this consecrated spot, permitted to the tread of the pioneers of the coming liberties of the world. A glorious band of brothers, of whom all the institutions of the earth, were unworthy, seizing their little all, shook the dust from off their feet against persecuting England, and with their wives and children in their arms and their hopes in Heaven, launched their frail bark upon the waves of an uncertain sea. It was a crisis in the destiny of nations. Like the ark of Noah, it bore in its bosom, the elite of the old world and the noble founders of the new. And as their ill-appointed vessel tossed on the wave, and trembled to the gale, how would the hearts of unconscious millions have throbbed, in agony, had they but known, that it bore in its bosom the priceless pearl of freedom. For a time, the hope of the world hung trembling on the billow and wavered in the blast. But the steady eye and unblenched heart were there, and favoring Heaven. These dangers were happily overpast, and the foot of the white man—the child of civilization—touched for the first time, these wild, but consecrated shores.



The die was cast—a new order of things began, and the future history of the world was changed.

They had abandoned all to escape oppression—had sacrificed all for the attainment of freedom. But neither was their purpose nor their judgment mistaken. In their new situation, notwithstanding the hardships of an unknown climate—the dangers of a wilderness of savages—the poor extremity of their means, and the want of political organization, they found their condition was improved. They found that their interest and happiness were united, that equal rights were not inconsistent with equal duties, and that the general will secured the general weal. They ascertained the truth and practicability of free principles, by their own experience, and therefore neither doubts of the future, nor precedents of the past, could overcome their convictions. No excess of wealth corrupted their principles—no luxury enfeebled their judgment or enervated their will—no want of the necessities of life impaired their physical energies, and no successful tyranny made them obsequious to power.

Such were the people and such the morale of their condition, among whom and of whom WASHINGTON was born. He was the master spirit of this condition of society: the embodied representative of the temper and principles of this new organization; and the first true exemplar of the system which secures the freedom of mankind. In no other state of society could he have been produced or sustained. He was alike the consequence of liberty enjoyed and the cause of liberty to come, and the existence of both was concerned in his.

It is only one hundred years ago this day, since the occurrence we celebrate was numbered in the calendar of human events. Then we were a colony, a poor, unknown people, scarcely noted in the concerns of nations. The achievements of a century had not then shed their light upon the American name; nor the success of our institutions excited the fear of tyrants, nor won the admiration of mankind. How deeply sensible ought we to be of the wisdom of those designs, the merit of those actions, which have poured such a lustre upon the recent obscurity of our fame. And to whom, under Providence, but Washington and his immortal compeers, are we indebted for those ripe and honorable distinctions, which separate us from the herd of nations. They won the battles that

secured our independence; they gave form and impress to all our institutions, and set thereon the seal of immortality. If even now, in the infancy of our existence, these United States were torn from all their strong foundations, and blotted from the earth, the light of their example would shine through all succeeding ages, with a glory above all Greek, all Roman, above all human fame.

IN WASHINGTON seemed combined all the elements to constitute a man in the highest meaning of the term. His form was of the finest specimens of manly beauty, and his carriage full of grace and dignity. His constitution, both physical and mental, of the happiest mould. In power of mind he stood at the head of the human intellect. His perception of truth, in the vast and various concerns with which his life was charged, seemed to indicate the intuition of a superior being; the unrivalled accuracy of his judgment was demonstrated in the extraordinary success of his wide and eventful range of action. His brightness was not indeed the glare of the meteor, but the steady light of the sun: it was not the brilliancy of a single act, but the finished series of his life; the combined results of all his action. The uniformity of his character marks the prevalence and constancy and purity of his motives; the high objects he pursued and attained, the morality of the means he used, clearly shew, that right and truth alone, were influential upon him. He knew the power of truth, and felt the strength that came from being right. His was not the cunning that invents and forges means of its own, because it is unable to discover any other mode of success; but the wisdom that, perceiving the true relation of things, avails itself of existing causes, with a certainty of their consequences. Hence the firmness of his resolution and the courage of his temper. Hence he shrunk not in the field of battle or the moral conflict; and conscious of the right, never trembled for the issue. Unlike the desperate few, who have achieved a bad eminence by indiscriminate means, he sought no results which virtue did not sanction; used no appliances which honesty did not advise. His character is unique, and stands alone on an eminence, unapproached—I had almost said inaccessible. Its union of goodness and greatness, of moral beauty and intellectual strength, adorned by services of inappreciable value to the human race, furnishes an instance of the sublime in morals, such as no human example has presented. It has changed the general idea of greatness, and shewn that the most enviable talent must find assistance in the aids of virtue.

He was fortunate beyond all the past, in the position which he held in the affairs of the world. The presiding genius at the birth of the first free nation—the daring leader of the first successful struggle for the principles of freedom—the idol of a young nation, yet to increase as the sands of the sea-shore—the grand agitator of the change, yet to come over all the governments of the earth, his fame will increase with ages and the multiplication of his race. He stood at the head of a new country—at the beginning of a new civil polity—at the source and fountain of that stream of liberty which was yet to overflow the earth, and like the deluge of old, to swallow up every vestige of the wrongs which had passed. In the whole range of time, in the wide variety of human affairs, there has been no era so felicitous for his existence as that in which he was born and lived; at no other point, could equal virtue have met with equal success—no other career could have secured the like train and splendor of consequences.

In his life, fortunate and happy above all other example—without a spot or blemish to mar his private fame, he was covered with glory in his public career; through all the round of action,—through all the change and casualty of life, he stood a model and exemplar to the human race. In the purity of his motives, in the nobleness of his designs, and in the extent and success of his course, he stands without a rival or an equal—ornatus Dei.

But he was not alone, in the great contest which he waged for the welfare of mankind. In the dark hour of our cause, a band of brothers gathered round him—such as the world had never seen, and may never see again. The pressure of the time reached every heart, and strengthened every hand. True to the call of WASHINGTON, and the high exigency of the times, obscure and unknown patriots, touched by the spirit of their cause, were roused and rallied to his aid. Of all the remnants of that heroic band that I have ever seen, there were none but had something peculiar in their character, shewing they had studied in the school and triumphed in the field with WASHINGTON. The very fact, that they were reached and acted on by the reasons of such a controversy, proves their nobility. I have always thought the character of the Revolutionary soldier one of unparalleled beauty. He fought not for fame, for he was too humble to expect it; he fought not for money, for he could have supported himself; nor from native turbulence of spirit, for he was a peaceable man at home; nor from

envy of superior rank, for he knew little of it and cared less about it. But with a distinct apprehension of the value of personal liberty—with a disbelief in the rights of hereditary power, and a strong opinion that superior merit should alone confer authority, he repelled from principle, the invasion of his just rights; he despised from feeling, the extravagant pretensions which England would enforce; and from unalloyed love of freedom, fought for himself, his country, and the common rights of man. The page of history will record no character so disinterested, so devoted, so firm and so mild, so enthusiastic and yet so rational, so sublime and yet so mere a display of the real dignity of human nature.

Of these, Washington was the glorious and unenvied chief and patron. Their love of him was as that of children to a father; amidst the hardships of the camp, the dangers of battle, the alternations of victory and defeat, and all the vicissitude of a military life, they reposed with most confiding faith in his skill and courage, his power and fortune. The little frailties of their conduct found shelter in the mildness of his virtues; but the outbursts of vice, their exposure and repression in the firmness of his principles.

Such was his knowledge of the human heart, and his acquaintance with men, that he rarely found himself in error in his choice of agents. He was enabled thus, not only to exert his own energies with success, but to secure the full amount of results from the ability that surrounded him. The leader and the led were touched by a common impulse, and moved on to the accomplishment of a common end. Thus it was in that appalling fight with a veteran nation, boasting of her strength and triumphing in her victories, that we were enabled to withstand the onset which was directed for our destruction.

Without having been bred to the science of war, he assumed the command of our armies, and for seven long years, with every disparity of means, baffled the skill and paralyzed the genius of the most celebrated soldiers. Without experience, he fought like a veteran; nearly without means, he still found resources; and sometimes, almost without an army, he held the enemy at bay by the vigor of his enterprizes. This struggle for the mastery was long held in doubt, but the star of his fortune at length prevailed against the ostent of the times. He conquered, not for fame,

but for freedom ; not for ambition, but for his country. How well and how greatly, let the present condition of the happy vallies and sunny mountains of freedom make answer.

But not even yet had he filled the full measure of his fame. In the pride of victory, in the flush of success, with a devoted soldiery, accustomed to execute his wishes, instead of stooping to the mean ambition of a tyrant, in ruining his country, to elevate himself, he plucked the warrior's plume from his brow, and cast it with his sword at the feet of his country. Oh ! how mean and little are the names of Alexander, of Cæsar, of Napoleon, when seen in the light of such a deed as this ! Instead of being an effort of his virtue, it was its natural result. Instead of being produced by ambition, it sprung from his ordinary sense of duty. What, to the most gifted, had proved an impracticable virtue, was to him, of facile performance. In no act was he governed by the narrowness of private interest. One general feeling of philanthropy seemed to inspire him, and he continually sought the welfare of his country, with a zeal and assiduity he never exhibited for his own. It is true, he could not have enslaved his country, had he cherished the design. The heroic band he led, would sooner have perished than yielded their assent. But in him, they saw the great example of patriot love ; from him they caught the spirit which knew no submission, and held all enemies alike who would injure their country.

He retired to private life, unambitious of further distinction, and well pleased to escape the din and turmoil of his former days. In the seclusion of his retreat he cultivated the quiet arts of peace, without a regret for the past or a sigh for the future. But fame found him here. The privacy of his condition did not obscure its glory, and again his country called him to her aid. The freedom we had won by valor must be preserved by wisdom. Though national independence was secured by the revolution, our political organization was imperfect. We had the materials of freedom, but not its system—the power of self-government, without being well aware of the best means of using it. We had achieved the privilege of self-government, but history furnished no precedent to aid in its exercise. And we stood a people, free indeed, but wanting the ascertained means of self-preservation. The sages and soldiers of the revolution, with the illustrious WASHINGTON at their head, again came forward to meet the high exigency ; they were

successful. In a council combining more experience, more patriotism and more intellectual power than the history of ages could shew, they devised a system of government, unique in its character and original in its design, which has answered the high behests of freedom, and stands a beacon light to all the nations of the earth. A numerous people now repose in peace and happiness beneath its power, encouraging by precept and example the diffusion of the benign principles of liberty.

WASHINGTON, without his own desire, was placed at the head of the new organization, by the voluntary suffrage of the people, and again became charged with the political destiny of his country. His life had been spent in the field, and his achievements were those of a soldier. But such was the nature of the Revolutionary contest, that the most eminent political merit, could alone have given efficiency to the most consummate military skill.—It was a war of opinion—its prosecution and success depended, not upon the coercion of an organized and arbitrary government, but on the voluntary judgment of the people. It was a high school for the civilian as well as the soldier—and admirably was WASHINGTON prepared by it, as well for the duties of the cabinet as the exigencies of the field. He assumed the responsibilities of his new and unprecedented station, and placed himself by the vigor and wisdom of his policy, upon the most enviable heights of political renown. If his success as a military chieftain had won the admiration of the world, his wisdom as a statesman secured its highest applause. Having given an impulse and direction to the untried institutions of his country, which will influence their destiny through all coming time, he voluntarily left the lofty station he had filled, and closed his career amidst the peace and happiness of that country he had assisted to elevate and redeem. The fabric of his character was then completed—then was the model, designed by Heaven for the imitation of mankind, brought to its final perfection. Then was the complete idea of freedom exemplified and explained. The mission for which he was sent, was accomplished—and the wide earth may now rejoice in the eventual fulfilment of those purposes of liberty to which his life was consecrated.

**No. 307.**

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**IN ASSEMBLY,**

**April 24, 1832.**

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**REPORT**

**Of the committee on trade and manufactures, on the communication from his excellency the Governor, upon the adulteration of potash.**

**Mr. Seymour, from the committee on trade and manufactures, to which was referred the communication from his excellency the Governor, upon the adulteration of potash,**

**REPORTED :**

That the importance of the subject induced them to resort to every source of information concerning it. They accordingly addressed a letter to the inspector of potash at New-York, who communicated personally, such facts as he possessed in relation to what is called patent potash. A letter was also addresssd to Horatio Gates, Esq. of Montreal, who, it is well known, is largely interested in the shipment of the article from that market. His answer to that letter, enclosing a communication from the Head Inspector of Potash at Montreal, and the extract from the printed circular issued by the house of H. Gates & Co. will show that the patent potash has not been confined to our market. The committee also employed Dr. Lewis C. Beck to make full chemical investigations into the qualities of the patent potash, and such other samples as are met with in our market. The full report of Dr. Beck contains the specifications of two patents, with remarks upon them, the analysis of several specimens of potash, and some directions by which adulterations in that article may be detected.

From all these documents, and from verbal information received by the committee, there can be no doubt, that mistaken views con-  
[A. No. 307.]



cerning the manufacture of potash are widely diffused; that a larger proportion of inferior potash has been sent to market during the last year than in any former year. From private letters, and other sources of information, the committee are led to believe that the patent modes have been adopted by many manufacturers, without the least intention of fraud; yet, from all they can ascertain concerning them, they are of opinion that they are calculated to injure the potash, and if extensively adopted, seriously to affect its reputation in foreign markets. In consequence of the short time which has elapsed since the receipt of the accompanying documents, the committee have not been enabled to prepare a bill on the subject, if indeed such a course had been deemed advisable; but they conceive these documents too important not to be laid before the community as speedily as possible. In a matter of this sort it is perhaps difficult to apply the remedy by any legislative provision. The only way which it can be done is by a revision of the law relating to the inspection of potash, But as the session is already so nearly completed, the committee did not deem it advisable at this time to make the attempt. In the hope however that the evil may at least, in a great degree, be met, and the interest of the manufacturers as well as the consumer may be protected, the committee would submit the following resolution:

*Resolved,* That four times the usual number of the communication of the Governor on the adulteration of potash, presented March 27th, 1832, and the documents accompanying this report, be printed.



# **Message from the Governor, relative to the adulteration of Potash.**

## **TO THE LEGISLATURE.**

**GENTLEMEN,**

I consider it my duty to lay before you the accompanying correspondence.

Document No. 2 contains the first information which I received of the existence of the abuse of which its writer complains. On the receipt of that letter, I felt the propriety of inquiring farther into the matter, and addressed a note, (Document No. 1.) to Professor Beck, the very learned and distinguished Principal of the Academy in this city. He gave immediate attention to it, and I received from him documents No. 3 and 4.

Number 4 is a memoir from the pen of Lewis C. Beck, M. D., the learned Professor of Chemistry in the same institution. This memoir confirms the statements in Document No. 2, in relation to the existence of the fact of the adulteration of potash, its mode and effect. It also gives a concise and lucid view of the chemical principles by which the adulteration is effected, as well as the very simple method of detecting it.

I can add nothing by way of illustration, nor can I conceive that any arguments are necessary to urge your attention to the subject, for the purpose of speedily providing a remedy.

**E. T. THROOP.**

*Albany, March 27, 1832.*

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### **[No. 1.]**

*Copy of a Letter to T. Romeyn Beck, M. D.*

*Saturday Morning, March 10, 1832.*

**DEAR SIR,**

I send you herewith a letter which I have lately received, in relation to a new and ingenious method of adulterating potash.

The matter concerns an important article of commerce, and if the facts and conclusions of the letter writer are tenable, the attention of the Legislature should be called to a correction of the abuse.

I know of no person more competent to give me satisfactory advice upon this subject than yourself, and if you have leisure to attend to it, I am sure that no person would more cheerfully lend his services in this way to promote the public interest.

With this apology for troubling you, permit me to subscribe myself,

With very great respect,

Your obedient servant,

E. T. THROOP.

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[No. 2.]

*February 28, 1832.*

To His Excellency ENOS T. THROOP.

SIR,

I am persuaded that, to secure your attention to the following suggestions, I need only assert their aim to be the public good; which fact too, I doubt not, will plead my apology for addressing one of your station, to whom I have not the honor of being personally known.

It may not, perhaps, be familiar to you, that within the last year or so, a supposed improvement in the manufactory of potash has been very generally introduced into this State. It consists chiefly in the addition of a certain quantity of common salt, (one pound to each bushel,) to the ashes, before adding the water to extract the alkali. The result is, a gain of about twenty per cent in the quantity of potash obtained from any given quantity of ashes; which potash is so pure in appearance that it has passed inspection, and been branded as "first quality."

If my views of chemistry are correct, the above process, instead of yielding a greater quantity of potash, introduces a most dangerous adulteration, amounting in weight to more than the quantity of salt used.

For the common salt, muriate of soda, (or according to the newer nomenclature, chloride of sodium,) is decomposed, and muriate of potash, (or chloride of potassium,) and soda remain; thus a part of the potash which might have been procured is destroyed, being converted into a muriate, and there is the additional adulteration of the amount of soda which existed in the salt made use of to effect this purpose.

This fraud must operate with peculiar severity upon the consumer, since if the same amount of adulteration was made with sand or stone, those articles could easily be separated by "solution" and "filtration;" but now, when for any purpose of art pure potash is needed, I scarce know any method by which it could be procured from the article adulterated in the manner above described. It is presumed that many who are engaged in making potash in this way are unconscious of the dishonest character of their conduct.

The evils of this state of things are obvious : 1st, It must destroy the character of our potash in the foreign market, and make the trouble and expense of inspection of no avail : 2d, If such potash is suffered to pass for best quality, it holds out by the operation of law, a premium of more than 20 per cent to induce the manufacturer to be dishonest.

A third bad consequence is this, many persons engaged in making potash, who are sincerely desirous of doing uprightly, are in doubt how to act. If they attempt to manufacture the unadulterated article, they are thrown out of employment, because they can not afford to pay so high a price for ashes as their neighbor, who makes on the "patent plan," and they dare not risk the sending to market a large quantity of the "new fashioned potash," lest its inferiority should in the mean time be discovered, and by its being pronounced "unbrandable" they should be totally ruined.

I am assured too, from a very respectable source, that many fair-dealing men, in various parts of the country, are at this moment engaged in making the last mentioned article, in the full belief that it is of the best quality, and will command the highest price ; and if they are permitted to proceed to make up their whole winter stock in this way, and are eventually disappointed in their reliance on the market, (as they must and ought to be,) it will doubtless reduce from competence to absolute want, many worthy and industrious individuals.

I would respectfully submit to your Excellency whether this may not be a fit subject for a communication from yourself to the Legislature. The remedy might be found in requiring of the inspectors, instead of relying on ocular observation, (which I am informed is the present mode,) to apply the appropriate chemical tests, such as nitric acid of a given strength, &c. to determine the purity of the article submitted to their examination.

For the increase of trouble, if proper, allow an increase of compensation. By this means all inducement to fraud would cease to operate, the purest potash would be made, it would maintain a high character, command the highest price, and all parties, both manufacturers and consumers, would be gainers. The progress of the patent manufacture might be at once arrested, by making it known, through the public prints, that potash made in this way would not receive the approbation of the inspector.

Lest the motive of this communication should be misapprehended, it is proper to state, that I am not now, never have been, and never except to be, in any way, concerned in the production or commerce of potash. If it should be necessary to adduce my name, in substantiating the facts above stated, I have no objection to its being used ; otherwise, I would prefer not to be known as concerned in this matter.

Very respectfully, yours, &c.

## [No. 3.]

*Copy of Letter from T. Romeyn Beck, M. D.**Albany, March 12, 1832.*

DEAR SIR—

In reply to the communication which you were pleased to forward to me, I beg leave to refer you to the accompanying paper, from my brother, Dr. Lewis C. Beck. His attention was called to the subject of the adulteration of potash last summer, and several specimens submitted to him were analyzed, with a view of ascertaining their impurities. I beg leave to add my full concurrence in the means that he suggests for the future inspection of potash, as indeed the only ones by which the character of that article can be raised in our own and foreign markets.

With great respect, I remain,

Your most obedient servant,

T. ROMEYN BECK.

His Excellency ENOS T. THROOP.

## [No. 4.]

*On the adulteration of commercial Potash, by Lewis C. Beck.*

During the last summer I was called on by Mr. Van Benthuisen, an inspector of potash in this city, with sundry specimens of potash, for the purpose of having them submitted to a chemical examination. About the same time, I was also requested by a large dealer in the article, residing in the south-western part of the State, to examine some specimens of potash said to have been manufactured by a new process, and which, so far as I could learn, consisted in the addition of an extra quantity of lime mixed with the ashes, and the use of hot instead of cold water as the dissolving agent.

From the experiments which I made upon the specimens which I had thus received, I was at once struck with their impurity, especially when compared with the American potash examined by the celebrated French chemist, Vauquelin, in the early part of the present century. Upon further examination, I was satisfied that this great deterioration was owing to the addition of various substances, either through ignorance of their operation, or with the designed purpose of fraud. Considering this an article of great importance to the State, I suggested to Mr. Van Benthuisen that it would be a proper subject for legislative interference, and recommended to him a communication of the facts to your Excellency.

Since that time, I have examined the subject more in detail, and have ascertained that the adulteration of potash by lime and common salt and other substances, is becoming quite extensively practised. Two patents have already been secured, which need only to

be read to convince almost any person how greatly the processes proposed to be pursued must injure the purity of the potash. If I am correctly informed, several manufacturers have already adopted one of these processes, with the mistaken idea that a larger amount of the alkali can be thus obtained.

In order to make my views on this subject more clear, I will briefly state the principles upon which the pure commercial potash is obtained.

The more probable opinion concerning the formation of the carbonate of potash (which is the state in which commercial potash occurs,) by the incineration of wood, is that the acetate of potash exists in the wood, and that this, by calcination, is converted into the carbonate. The wood is burned upon the earth, in a situation protected from the wind, the result of which is the formation of carbonate of potash, and several other soluble salts, together with some substances upon which water has no action. By lixiviation with hot or cold water, the alkaline part is dissolved out, and this solution, when boiled to dryness, leaves behind a dark brown saline mass, consisting of carbonate of potash, a minute portion of one or two other salts, and a small quantity of vegetable inflammable matter; and in this state it is known in commerce by the name of *Potash*.

Calcination at a moderate heat, completely burns off the coloring particles, and the salt becomes of a spongy texture, and beautiful bluish white tinge; it is then called *Pearlash*.

Such are the simple principles upon which these articles are manufactured. But instead of following them, various substances are added, either previous to, or during the process of boiling, *ostensibly* for the purpose of facilitating the manufacture; but which **REALLY** have the effect of increasing the weight of the resulting mass, at the expense of its purity. Of these substances, lime and common salt are perhaps at present the most extensively employed.

**Lime.**—This substance operates very differently when mixed with the ashes from what it does when thrown into the clear lixivium. In the former case the lime combines with the carbonic acid of the carbonate of potash, and forms an insoluble carbonate of lime, which remains unacted on by the water, while the potash is rendered more pure. This, indeed, is the process by which chemically pure potash is obtained. But when the lime is added to the clear liquor, and then boiled up without a second filtration, a large quantity of carbonate of lime (common limestone) is the result. This fraud can be detected by the want of solubility in the potash, and the effervescence of the insoluble portion upon the addition of a dilute acid.

**Common Salt.**—The addition of this substance to the lixivium, is a most dangerous fraud, as it injures the quality of the potash, while its presence cannot be very easily detected. The reason of this will be evident from the fact long known to chemists, that when common salt is added to carbonate of potash in solution, a double decomposition takes place, the result of which is the formation of muriate of potash and carbonate of soda; the former being whol-

ly useless, the latter being employed for other purposes than those to which common potash is converted.

The danger attending this adulteration is, that muriate of potash is a deliquescent salt, and highly soluble in water, agreeing these respects with the carbonate of potash. Carbonate of soda is also soluble, so that by the ordinary mode of inspection, such samples of supposed potash would probably be branded as first quality.

From these facts it is evident that unless a more efficient mode of inspection is established, the time is not far distant when our potash will be completely driven from the market. The mode of inspection must of course depend upon chemical principles, as the solubility of the potash and the effect of acids of known strength upon it.

When potash is adulterated with substances of little solubility, the fraud may be detected by ascertaining how much of one ounce will dissolve in two or three ounce measures of pure water. The pure salt will completely dissolve in two parts of water. But when substances of easy solubility are used for adulterating potash, as for example, common salt, they may be detected as follows: The inspector should be furnished with a quantity of sulphuric acid, of uniform strength. It should be ascertained by experiment, exactly how much of this acid is required to neutralize a given quantity of pure potash. Having ascertained this fact, one ounce (or more) of the potash to be inspected is dissolved in water, and to the clear solution a known quantity is added carefully, until the alkali is perfectly neutralized, a point which can be determined by test papers of litmus or turmeric.

Having ascertained the exact amount of this acid necessary to neutralize the ounce of potash under examination, it is easy to determine the quantity of pure potash; for as the quantity of acid required to neutralize one ounce of pure potash is to the ounce, so is the amount of acid expended to that of pure potash in the specimen under inspection. To avoid the necessity of testing the acid for the purpose of determining its neutralizing power, acid of uniform specific gravity may be employed. According to Dr. Henry, the best that can be used for this purpose, is sulphuric acid of the specific gravity of 1.141. Of this, 355 grains by weight are equivalent to the saturation of 100 grains of carbonate of potash. Dissolving, therefore, that quantity of the potash to be inspected in water, and gradually adding the test so as to produce neutralization, we learn, by the quantity of acid expended, the quantity of real carbonate which has been acted upon; for as 355 is to 100, so is the weight of the test which has been used to the number required.

This or a similar mode of inspection is, in my opinion, the only one which will meet the case of the fraud which seems now to be so extensively attempted. Perhaps, however, a more complete chemical analysis of the samples of potash brought to our market, would suggest some modification of the process.

LEWIS C. BECK.

## DOCUMENTS.

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*Montreal, April 7, 1832.*

**WILLIAM SEYMOUR, Esq.**

SIR—Yours of the 30th ultimo was received the 5th inst., and although I could personally (having derived my information from time to time during the last season from our very respectable head inspector,) have given you the substance of the information now contained in Mr. Bouthillier's letter to me as enclosed, yet I prefer giving you the information sought after in the inspector's own words. My house has for a great many years done a heavy business in the sale and shipment of ashes as commission merchants, having in the last shipping season had about 32,000 barrels through their hands, and they feel much interested in keeping up the reputation of the article in foreign markets.

Yours, very truly,  
**HORATIO GATES.**

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*Montreal, April 7th, 1832.*

**HORATIO GATES, Esq.**

SIR—In reference to a letter dated March 30th, signed by William Seymour, chairman of a committee of the Legislature of the State of New-York, on trade and manufactures, addressed to you on the subject of adulteration in pot ashes, we have to observe, that pot ashes for many years past have been adulterated to a greater or less extent, by adding foreign substances in the kettle while in the act of melting, such as sand, lime, salt, &c. ; but ashes adulterated in this manner, can easily be distinguished by an experienced inspector.

Within the last year, a new, or as it is termed, *patent* mode of manufacturing pot ashes has been introduced, which consists (from what we have been able to collect from respectable sources) in pouring over the raw ashes in the leech tubs, boiling water in which salt and lime had been previously dissolved; the ley from which being, by the usual process, made into salts and melted down, yields a considerably greater quantity of an article resembling pot ashes of the best quality, but which is greatly deficient in the quantity of



caustic alkali, that would be contained in the same weight of genuine pot ashes of a similar appearance, and which deficiency has been found by experiments made by the inspectors, to be in proportion to the quantity of salt put into the before mentioned mixture. To detect ashes adulterated after the above manner, becomes a matter of much greater nicety, inasmuch as the pot ashes thus manufactured have nearly the same appearance as genuine pot ashes, and that too of the best quality, as already stated.

Before any knowledge was had of this new mode of adulteration, the inspectors had detected the imposition, in the first instance by not finding that caustic heat which is always felt in genuine pot ashes, and which led them to suspect that the sample under inspection, although having all the outward appearance of pot ashes of best quality, must, by some process or other, have been adulterated; and in submitting it to the proper chemical test, they ascertained their suspicions to be well founded; the sample in question having only 65 per cent of caustic alkali, whereas genuine pot ashes of the best quality, would contain from 80 to 85 per cent.

No pot ashes manufactured in this manner (with very few exceptions) have been found of sufficient strength to be branded *first*—a considerable portion has been branded *thirds*, and a good many not entitled to any brand.

I am, Sir, your obedient servant,

J. BOUTHILLIER, *Insp'r and Ass'ts.*

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*Extract from the Circular of H. Gates & Co. of Montreal.*

“Our advices from Europe, received from time to time, down to the 7th Nov. are by no means encouraging, and some of our correspondents largely interested in ashes say, that a soda ash is making in England, on a large scale, which can be afforded at £20 sterling per ton, which is equal, for the use of bleachers, to a ton of Canada pot ashes of ordinary quality, and that the latter are consequently without demand to any extent and tending to a decline, notwithstanding it was known on the other side that a short supply of pots was anticipated, and the high rate on this side; pearls were also exceedingly dull and comparatively low, and we can not conceal our apprehensions that the new substitute will tend to diminish the consumption of pot ashes very considerably, and lessen the value in foreign



markets, and consequently in this. The large supplies of pearls shipped from hence in 1831 over 1830, will no doubt keep them low in the English market, and we are by no means sanguine that either pots or pearls will be 1s per cwt. higher here on the opening of navigation than they are now; say pots 28s 6d  $\alpha$  29s, and pearls 29s 6d  $\alpha$  30s. Before closing our remarks on ashes, we wish to advert to the new or patent method of making pot ashes, which has been practised the last season, and to say, that, although some few have passed as first sort, yet the greater portion, although frequently looking well to the eye, have been found to be wanting in strength, and have been cut down to 2nd, 3rd, and unbrandables."



## Communication from Lewis C. Beck, M. D.

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*To the Hon. William Seymour, Chairman of the Committee on Trade and Manufactures.—Assembly of New-York.*

The within report contains the result of my investigations on the subject of potash. There are several minor points which I could have wished to examine more in detail ; but as you expressed a desire to have my report before the adjournment of the Legislature, I have endeavored to comply with it.

With my wishes that your efforts to sustain an important branch of industry, will be crowned with success,

I have the honor to be, yours, &c.

LEWIS C. BECK.

*Albany, April 21st, 1831.*

### Report on the adulteration of Potash.

In discharging the duty which I considered as imposed upon me by complying with the request of your committee, I have endeavored to obtain all the information relating to the patent modes of manufacturing potash, and to several other points which I conceived to have a bearing upon the inquiry.

Before proceeding to give the results of my examinations, it may not be amiss to lay before you the specifications of the two patents which have been heretofore noticed, and upon which much potash has been manufactured. They are to be found in the 7th and 9th volumes of the Franklin Journal, and I need offer no apology for quoting the accompanying remarks of Dr. Jones, the talented editor of that work.

The first of these patents, is "for an improvement in the manufacture of potash, by Thomas H. Sherman, Hastings, Oswego county, New-York, February 2d, 1831."

"We have in this specification," says Dr. Jones, "the announcement of some magnificent chemical discoveries ; one of them is, that salt will burn up, and that lime will become potash. Lest those who are adepts should be inclined to doubt, we will give the discovery in the words of the philosopher to whom it is due.

'The compound used is salt, lime, and lamp oil. First when beginning to melt, after the salt has done rising, it can then be ascertained what quantity of potash you are going to have. Suppose one barrel : First, take half a bushel of salt, sprinkle half of it over the top of the potash : Secondly, take two bushels of slaked lime, add that in the same manner, then the remainder of the salt ; and when

the lime has disappeared, then add half a pint of lamp oil. This is the quantity used for one barrel; but it may be varied as the nature of the case may require. First, the use of the salt is to create a heat, and to purify the potash; as it is supposed to burn up, and add nothing to the quantity, but to the quality: Secondly, the lime is supposed to melt and become the first rate potash: Thirdly, the oil is to create a blaze to consume: Fourth, these are the contemplated uses of the above ingredients used by me.'

Dr. Jones adds, "If a patent had been required for deteriorating one of the staples of our country, the one under consideration would most completely have fulfilled the intention; and it is earnestly hoped that its validity may in some way be tested in our courts of law, where, we apprehend, it would not be esteemed a 'useful invention,' according to the intention of the patent law; as its inevitable result, if acted upon, must be to injure the reputation of American potash in foreign countries; the material would be entirely spoilt as it regards its use in many manufactures."—*Franklin Journal*, N. S. vii. 366.

It is not necessary to add any thing to these remarks. The article manufactured by the above process, could certainly never pass inspection. The deception is too gross.

The other patent is more specious; but as I shall endeavor to show, can by no means be considered a useful invention. It is entered as a "patent for manufacturing potash from wood ashes.—Ephraim Pearce, Lincklaen, Chenango county, New-York. July 20th, 1831."

"Leaches are to be prepared by placing sticks, straw and quicklime in the usual manner. They are not to contain more than six bushels of ashes, which must form a stratum of from eight to fourteen inches in thickness. Forty-five gallons of water, containing six pounds of salt, are to be heated to near the boiling point, and half a bushel of unslaked lime is then to be thrown in, which will immediately produce boiling. A bushel of ashes is to be boiled in another kettle with six gallons of water. A bushel of ashes is then to be put into the leach, and upon this three gallons of the boiling lime water are to be poured and allowed to soak in. Ashes are then to be added, a bushel at a time, with six gallons of the lime water after each, until the intended six bushels are in the leach. The remaining lime water is to be poured on, six gallons at a time, allowing it to disappear between each pouring.

"Three gallons of cold water are then to be put into the kettle of boiling ashes and water, when a quart or two of slaked lime, and a pint or less of salt are to be sprinkled on; after removing the coals, &c. by skimming, six gallons of this water are to be put into the leach; cold water is afterwards to be poured on the leach, until the strength is out. This leaching liquid is to be put into the ley kettle containing the above named six gallons, and the boiling is then to be effected in the ordinary way; which the patentee says, will produce the best quality of potash. He adds, that ashes which, worked by the ordinary, will produce one ton, will, by his method, yield more than two tons.

"We have been at some pains," says Dr. Jones, "to give the whole process by which the patentee says he produces a result so extraordinary, as we are altogether unable to discover in it any thing to justify the assertion; nor are we prepared to believe that manufacturers of potash have hitherto been in the habit of throwing away more than one-half of that which is contained in the wood ashes."—*Franklin Journal*, N. S. ix. 48.

This patent closely resembles one obtained in England by Thomas Howard, in 1801; the specification of which is recorded in the *Repertory of Arts*, 1st series, vol. 16. It is entitled "specification of a patent for a method of making a British barilla and potash, and of obtaining a greater quantity of alkali than hitherto discovered." It is quite doubtful, therefore, whether the American patent can be considered as an original one. Considering this, however, of little importance, I shall state my objections to it, and endeavor to show that the employment of this process must greatly deteriorate the potash.

It is well known that the mixing of lime with the ashes, before lixiviation, is very commonly resorted to, and probably improves the potash, as it renders it more caustic; but when the lime is added during the evaporation of the lye, it must greatly injure it. According to the specification, six bushels of ashes are to be contained in each leach. To these six bushels are to be added, first, six pounds of salt, which being soluble must pass off with the lye, and afterwards a pint of the same substance is added to the kettle containing the boiling ashes. And if I understand the specification, at least a quart or two of slaked lime is thrown into the lye kettle, with a portion of ashes; but I confess this part of it is somewhat confused. Allowing 50 pounds as the maximum yield of salts from six bushels of ashes, it must contain at least seven pounds, or 14 per cent of common salt, to say nothing of the lime which must also be mixed with it.

The increase in the amount of potash, which is said to be in this manner obtained, is probably owing to the smaller size of the leaches, and the use of hot, instead of cold water, for the lixiviation. These, perhaps, are advantages; but as before stated by Dr. Jones, it can hardly be credited that our manufacturers have been in the habit of throwing away one half of that contained in wood ashes. But upon this, I shall offer some further remarks in a subsequent part of the communication. It may be stated, however, that the idea of working ashes upon this plan which have already been leached, is by no means the least dangerous to the true interest of the manufacturer. This will be understood, when we recur to the fact, that the carbonate of potash, upon which the value of the commercial article depends, is very soluble in water, even when cold. But in addition to this, ashes contain some salts which are difficultly soluble, and which are generally regarded as impurities. By the first lixiviation the latter may have escaped solution, and remain in the ashes. Upon employing hot water, which is a more powerful solvent than cold water, these may be dissolved out in greater quantity; at the same time also, I am free to admit, that by the action of the lime in the leach, a portion of caustic alkali may also be formed.

It is my decided opinion that the general adoption of this patent must inevitably injure the character of our potash, and thus materially affect the true interests of the manufacturer. But as I shall again recur to some of the points now noticed, I shall proceed to give the results of my analysis.

In the examination of the several specimens of potash which I received from the inspectors at New-York and Albany, my main object was to determine the amount of what are usually considered impurities, which they contained. The other salts which commercial potash is known to contain in minute proportions, I did not consider it necessary to separate, as much more time would have been required for that purpose, without any practical advantage accruing from it. My design was not so much to present complete chemical analyses, as to show in the plainest manner, and as much devoid of technicalities as possible, the comparative value of the specimens examined.

A.

The process which I adopted is as follows:—500 grains of the specimen to be examined was dissolved in six or eight ounces of water, gently heated, and the solution filtered. The matter on the filter was again washed with a small quantity of water, and after being perfectly dried was weighed, and set down as insoluble residuum.

B.

The insoluble matter was treated with dilute acid, and then tested with various re-agents. It generally consisted of carbonate of lime, oxide of iron and silex, although the proportions were very various. These I did not consider it necessary in each case to determine.

C.

The weight of the filtered solution, A. was now accurately determined, and to a known portion of it acetic acid was added, until the alkali was completely neutralized, when the weight of this last was again added.

D.

To this solution acetate of baryta in solution was added as long as it caused any precipitation, and the whole filtered; the resulting sulphate of baryta being then dried and weighed, gave by estimation, the amount of sulphuric acid contained in the whole solution. Supposing this acid to be combined with potash, the amount of sulphate of potash in the specimen under examination was easily determined.

E.

To the filtered solution D., nitrate of silver was now added, as long as any thing was thrown down by it. The resulting precipitate was dried and weighed. This was chloride of silver, and from its weight by estimation, the whole amount of chlorine was deter-

mined. Supposing this to have been originally combined with potassium, the quantity of chloride of potassium in the specimen was deduced.

From several experiments I was satisfied that in addition to potash, soda was also contained in most of the specimens which I examined. But from the curious play of affinities between the salts of soda and potash, it was not so easy to determine the exact state of combination in which the soda existed in a given parcel of potash. Indeed the separation of the salts of soda and potash, especially when one is in small proportion to the other, is one of the most difficult processes in analytical chemistry. This is especially the case when the object is to ascertain the existence of soda which can only be distinguished from potash by negative qualities, and can only be accurately separated from it by a very nice chemical process. This it is not necessary to explain, as it could not, in my opinion, be employed in ordinary inspection. The different manner, however, in which most of the salts of soda and those of potash are affected by exposure to the air, may in some instances enable the inspector to distinguish between them. The carbonate, and most of the other salts of soda, do not become moist by exposure to the air, while the carbonate of potash soon becomes moist and at length assumes the liquid form. The effect of exposure to the air is therefore one of the tests which may be advantageously employed, where others cannot be resorted to. I am the more particular in stating this circumstance, because I have heard it urged as an objection to some samples of potash, that by exposure to air they rapidly deliquated or became moist. The carbonate of potash alone, of all the substances ordinarily contained in commercial potash, possesses this property, and the more rapidly ordinary potash becomes moist the more pure may it be considered. But it should not be understood, that moist potash is the purest; for in this state it contains a large quantity of water, which of course adds nothing to its value. I performed an experiment to determine the increase of weight which a specimen of potash undergoes, by exposure to a moist atmosphere. The mass weighed 413 grains. Upon being exposed 3 hours, it had gained 5 grains; in 24 hours, 27 grains, or more than six per cent.

As I have remarked, the presence of soda was inferred in several of the specimens, and might probably have been detected, had time permitted, in all. In two of these, however, it was in so large proportion, that it could be readily separated by the addition of muriatic acid, and by careful crystallization of the resulting solution. I would particularize No. 7, in the accompanying table, which was designated by the inspector as "highly salted," a decision which my analysis fully confirmed. It is probable that the soda exists chiefly in the form of the carbonate, for reasons which have been fully explained in my former communication. This must result from the addition of common salt to the lye.

The following table will exhibit the comparative purity of the specimens which I examined; and in order to show in what respects they differ from the specimen of American potash examined

[A. No. 307.]

many years since by Vauquelin, and I shall prefix his analysis, reduced to the same number of grains which I employed.

	Insoluble matter.	Sulphate of potash.	Chloride of potassium.	Carbonated alkali and water.	Total.	Impurities per cent.	Carbonated alkali per cent.
1	.8	66.8	8.7	423.7	500.	15.4	84.6
2	58.	37.5	36.5	368.	500.	26.4	73.6
3	2.5	31.5	75.	391.	500.	21.8	78.2
4	12.	61.	54.	373.	500.	25.4	74.6
5	8.	57.5	50.	384.5	500.	23.1	76.9
6	57.	22.	46.	375.	500.	25.	75.
7	38.	52.	164.	247.	500.	50.8	49.2

No. 1 is the result of the analysis of Vauquelin, before mentioned. It exhibits 6 per cent more of the alkali than any of the specimens which I examined. I should observe that the purest American potash contains from 80 to 85 per cent of what is commonly called 'alkali.'

No. 2 was a specimen received from the inspector at Albany, and marked as "first sort, but not of the best quality." It was colored, and contained much insoluble matter, consisting of carbonate of lime silex, and oxide of iron. In other respects good.

No. 3. Supposed to have been made on the patent plan. It was nearly white, with a somewhat pearly lustre. The large proportion of chloride left no doubt that common salt was employed in its manufacture. A portion of the carbonated alkali, therefore, consists of carbonate of soda.

No. 4. From the same parcel as the last but of a darker color and much more impure. The average per cent of alkali in the two specimens is about 76. There was evidently an admixture of common salt in considerable proportion during the manufacture.

No. 5. Marked, "made partly on the patent plan," of a light color. Does not differ materially from the former.

No. 6. Another specimen of the same kind as 5, but of a darker color. It contained more insoluble and less soluble impurities. The average of the two specimen is 75, 3 per cent alkali.

No. 7. A specimen of a beautiful reddish color, received from the Inspector at New-York, and labelled "highly salted." Although I have set down 164 parts chloride of potassium, a portion of this was common salt which had undergone no change. It also contained carbonate of soda, in considerable quantity. This is a sufficient proof of what frauds can be practised by the addition of salt. The insoluble residuum was much less than that in No. 3. and yet the total of impurities was more than 50 per cent. This is an instructive lesson to those who have been deceived by the notion expressed in the first patent, that the salt is "burnt up."



Having now determined with what I conceived to be a sufficient degree of accuracy the nature and proportions of the impurities contained in the above specimens, I dissolved three other specimens in water, and to the filtered solutions added nitric acid of known specific gravity, until the alkali was completely saturated, in the manner more particularly described hereafter. The following were the results :

	Insoluble matter.	Pure alkali.	Soluble impurities carb. acid and water.	Carbonated alkali, per cent by estimation.
8	3	252	245	From 65 to 70 per cent.
9	5.5	251	243.5	
10	6	256	238	

No. 8 was common ashes. 2d sort from New-York. The two others were specimens from this city concerning which some doubt was entertained by the Inspector.

Upon reviewing these analysis it will be observed that there is every possible variety in the specimens brought to market. To a certain extent this is unavoidable, even where the most approved process of manufacture is adopted ; and much more so where various foreign substances are added in consequence of the mistaken notions of the manufacturers. I have been at some pains to ascertain the truth with regard to some of the views current among them. The chief of these relate to the employment of lime and salt, which, as already stated, are by far the most common impurities. With regard to lime the manufacturers urge, that its addition to the lye while boiling, assists in "keeping back the nitre," as they term it. By this term "nitre" is meant the sulphate of potash which being much less soluble than any of the salts contained in the ashes, begins to crystallize long before the others, and forming a solid crust, proves somewhat troublesome unless removed, which it should be if in large quantity. The lime which is added decomposes this salt and forms sulphate of lime, which immediately falls down with the portion of lime not acted on to the bottom of the kettle, while the potash resulting from the decomposition of the sulphate enters into other combinations. The lime rapidly absorbing carbonic acid from the air is converted into carbonate of lime, and hence this with sulphate of lime, oxide of iron, and silex, constitute the insoluble matters so generally found in our potash.

I have examined every work within my reach in the manufacture of potash is treated of, to ascertain whether this substance is employed in other countries, but I could find no notice of it. It must be positively injurious when added during the evaporation of the lye.

The reason alleged in favor of the use of salt is, that it facilitates the melting of the potash. This is probably owing to the fact, that the salts of soda are generally more fusible than those of potash. But this advantage can by no means make up for the positive injury done to the potash by its addition. It should in no case be employed in any quantity.

An opinion has sometimes been entertained that old ashes produce more alkali than those which are fresh, and they are used in preference when the manufacturer has the means to form a store. This, however, is a fallacy. By exposure, indeed, the alkali is more completely carbonated, and by this means alone are its weight and bulk increased; the alkali then appears more abundant, but it is less pure. Sometimes, also, a second lixiviation of the ashes is performed, after they have been exposed for some time to the air. But if there is a second product, it is because the first lixiviation has not been complete. The amount of pure alkali is constant, being neither increased or diminished by exposure to the air.

In regard to the particular mode of lixiviation, I shall be content with quoting the remarks of Count Chaptal, who for several years had the direction of the manufactories of potash in France, and who at the same time was one of the most accomplished chemists of his day. "Although the operations of the manufacturer (says he) be not the same in different works, the only variation consists in the manner of lixiviating the ashes and of concentrating the lees. Some lixivate the ashes in cold, and others in warm water; the former employ large quantities of water to exhaust the ashes, and on this account the evaporation must be long and expensive; the latter quickly obtain the water more highly impregnated, the ashes are more completely exhausted, and they manufacture more potash in a given time. The first method occasions more labor, requires a greater number of vessels, and occupies more time; the second consumes a little more fuel, in order to heat the water of lixiviation, but shortens the operation. The manufacturer, however, must balance the advantages and the inconveniences of each method, and make his choice as his interest and situation may dictate."—*Chaptal's Chemistry applied to the Arts*, II. 86.

These remarks will, I apprehend, afford the true explanation of the advantages supposed to be derived in manufacturing potash upon the plan proposed in the patent of Mr. Pearce. Small leach tubs are employed, and hot water is used in the lixiviation, by means of which the ashes are more rapidly and completely exhausted. But these advantages are much more than counterbalanced by the singular freedom in the addition of lime and salt.

On the whole, after giving this subject all the attention which its importance demands, I feel warranted in asserting, that no advantage is to be derived from manufacturing potash on the patent plan. On the contrary, the purity of the article must be materially impaired, and its value as an article of commerce diminished, inasmuch as the amount of potash is not only reduced, but there is at the same time mixed with it a portion of soda salts. In other words, potash manufactured fully on the patent plan is worth no more than a mixture of potash and barilla.

Whether any legislative provisions are necessary to guard the public against deceptions in this article, is a question concerning which there is a difference of opinion among those interested in it. It is asserted by some that the reputation of our potash is now higher in foreign markets than that of any other country, and that it is not for our interest to improve the manufacture. One or two facts,

however, deserve to be mentioned. The first is, that where potash can be much adulterated, and still by the ordinary inspection pass among the first or second sorts, there is in effect a premium offered to the most successful adulteration. But this fraud does not escape detection. From the hands of the large dealer the potash goes to the artist, who cannot long be deceived with regard to it. The large manufacturing establishments, both in England and on the continent, are generally conducted by practical chemists, who are familiar with the chemical tests for ascertaining the purity of the substances which they employ. These tests they constantly apply in the case of commercial potash, and by them is its true value and reputation determined. When *they* pronounce the American potash to contain  $\frac{1}{4}$  or  $\frac{1}{2}$  its weight of soda salts, the dealers in potash both here and abroad will find that the demand for it will soon cease altogether.

There is another consideration which deserves also to be noticed. It is, that the carbonate of soda, the barilla of commerce, is now extensively manufactured in England, and from present appearances it is likely to exert an important influence upon the manufacture of potash in this country. The soda-ash is much cheaper, and answers well for most of the purposes which require an alkali. Potash, however, will still continue to be preferred in several manufactures, and in some, indeed, it is almost indispensable. But to retain even this place, it is necessary that it should be of tolerable purity. An article such as is made fully on the patent plan, with a large admixture of salt, can be of but little more value in foreign markets than the soda-ash. And when the idea comes to be generally entertained, that the American potash is an admixture of this kind, it will be completely driven from the market, or at least its value will be regulated by that of the soda-ash.

It appears to me, therefore, that there is at the present time an especial inducement to preserve the purity of our potash, and to prevent, in every way, its useless adulteration. This, I believe, is the only means by which its present place in the market and in the arts can be sustained. I repeat it, we never can compete with the soda-ash of England and France by adulterating our potash, though its price may be materially reduced by the operation, for the very reason that we cannot profitably export either lime or salt.

The use of these substances should be discouraged, and the obvious principles which regulate this manufacture be adopted by those who have the direction of asheries. By pursuing this course the true interest of the manufacturer would be best consulted, and the state might still retain the revenue which is in various ways derived from it. But in order to secure this result, it appears to be necessary that the inspectors should have the means of detecting at least the more important adulterations, as it is upon their decision that the price of the potash in this market depends.

I am aware of the tact which our inspectors acquire in the examination of samples of potash, and of the accuracy with which they ordinarily judge of their purity. But there are cases in which the most experienced may be misled; and against these it is important to guard. Knowing the difficulty of introducing new regulations

into such an every day business, it is not without some hesitation that I am induced to offer the following suggestions.

1. There are now, I believe, three sorts of potash recognized by the inspectors; but if I have been correctly informed, there are few samples of those passed as first sort which do not contain a considerable proportion of lime, to say nothing of soluble impurities. Another brand designated "pure," or by any other character which would be thought most convenient, might, in my opinion, be advantageously introduced. This should contain no lime or salt, and at least 85 per cent carbonated potash.

2. To determine the insoluble impurities, the following is a good process:—Take from different parts of the cask under inspection, small pieces, so that they may represent a fair average of the whole. Reduce these to a coarse powder in a mortar, and when well mixed take 400 grains, and having put them in a glass vessel, add three or four ounces of pure water, and apply gentle heat to the vessel. After a short time pour off the clear solution, and add a little more water to the insoluble portion, if there be any. Throw the whole contents of the vessel upon a paper filter, and after the solution has passed through, again add a little more water to wash the filter and its contents. Then dry the residuum on the filter, and ascertain its weight. This will give the per-centage of insoluble matter in the specimen under examination. When it exceeds one or two parts in the hundred, it is probably owing to carelessness in the manufacture, or to the addition of lime.

3. The soluble impurities are more difficult of detection: and it is not easy to reduce the process to a single trial. I should recommend the following as, upon the whole, the easiest and simplest method, and sufficiently accurate for common purposes. Take the filtered solution obtained in the former experiment, and divide it into four equal portions; put one of these portions into a glass vessel, as a common tumbler, and add to it a portion of the infusion of blue cabbage or of litmus; at the same time, as a means of comparison, place another tumbler of the colored infusion near it: by the action of the alkaline liquor, the infusion in the first vessel will be changed to a deep green color. Now take a glass tube of about nine or twelve inches in length, and from one-half to three-fourths of an inch in diameter throughout its whole length, and accurately graduated into 100 equal parts. Into this tube introduce 103 grains of nitric acid, known to be free from all impurities, and of the specific gravity of 1.48, and fill up the remaining space with water. This amount of acid is just sufficient to neutralize 100 grains of subcarbonate of potash. The dilute acid is now to be carefully added to the alkaline solution, until it is completely saturated; a fact which may be ascertained by the change of the green colour of the infusion, to the blue or purple of the test employed, and which may be easily determined, by comparing it from time to time with the infusion of cabbage. During this operation, the solution is to be frequently stirred with a glass rod, and the whole is to be gently warmed to drive off the carbonic acid, which may lead to mistake. When the original colour of the blue infusion is restored, the amount of dilute acid required to produce the effect, is carefully noted; and from this, the

amount of subcarbonate of potash is easily ascertained. If 80 parts of the acid have been used, then there is 80 per cent subcarbonate; if 70 parts have been used, then 70 per cent, and so on.

The above process is quite accurate, and with a little practice may be very easily adopted. The only precaution to be noticed is, that the acid employed be pure, and of the requisite strength. In cases where this acid cannot be obtained, it will be necessary to determine the saturating power of the acid, by a few careful experiments with chemically pure potash.

In ordinary cases the above experiments will be sufficient to fix the character of the specimen under examination; but where salt has been added in any quantity, its detection will require additional processes. I do not know of any method by which these can be rendered very simple; for the reason that has been before given, that the accurate and complete separation of potash from soda, is one of the most delicate operations in analytical chemistry. When a large quantity of salt has been used, its presence can be readily detected by the experienced inspector. But in other cases it may completely escape his notice.

The only unexceptionable mode of separating potash from soda, is by means of nitro-muriate of platina; but this is an expensive article, and its successful employment requires a nicety of manipulation which can only be expected from the experienced chemist. An approximation to a correct decision on this point may be attained by adopting the steps described in D. & E. in the preceding account of the process adopted in my analyses. By adding to a known quantity of the solution, a sufficient amount of nitric acid for its neutralization, the sulphate and muriate of potash may be thrown down, first by the addition of acetate of baryta, and afterwards by that of nitrate of silver. If the latter substance occasions an abundant precipitate, we may infer that it contains an admixture of salt; for although muriate of potash (chloride of potassium) is contained in almost all the samples of potash, it seldom constitutes more than two or three per cent.

In addition to these tests it might be mentioned that tartaric acid when added to a portion of the solution, will soon throw down the potash in the form of a difficultly soluble salt, (the bitartrate of potash or cream of tartar,) but the soda will be retained in solution, and may be separated by subsequent evaporation.

These, so far as my information extends, are the only tests which can be relied on for the detection of the soda salts, when mixed with potash. It would be very desirable, if a more simple method could be devised, but none has yet occurred to me, nor can I find any in the whole range of chemical works which I have consulted with direct reference to this point.



**No. 308.**

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**IN ASSEMBLY,**

**April 24, 1832.**

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**REPORT**

**Of the select committee, under the resolution to inquire into and report upon laws respecting apprentices.**

**Mr. T. Smith, from the select committee, appointed under the resolution directing an inquiry into laws relating to apprentices,**

**REPORTED:**

**They have examined the subject referred to them, and upon a deliberate inspection of the statute, entertain the opinion that its provisions are in general judicious, embracing the objects in view with guarded reference to the rights of parties, as well in the powers and duties individually or relatively, as in the manner of arriving at a proper redress of grievances. The law having become well understood, the forms under it regulated, the practice defined and settled, an alteration at this time might produce evil rather than benefit. Therefore, a revision of existing laws is not advised.**

**But in a further view of the subject, the committee are of opinion cases do exist and are increasing, in which legislative enactments might beneficially apply. In explanation of the views entertained on the subject of this report, large manufacturing establishments may be selected—especially such where it would be profitable to employ large numbers of children, and many of them of an age incapable of enduring excessive toil. The labor at some of those places, is often done in confined rooms, crowded by numbers, and with the materials used, together calculated to produce an atmosphere impure and unhealthy; or an unreasonable duration of time for labor imposed, making the performance onerous and the results injurious;**



or at labor excessively fatiguing, liable without care to subdue the hardiest constitutions. That the foregoing may not incur misapprehension, and be construed into a censure upon manufacturers, and an opposition to manufactories, the committee say they should feel themselves wanting in duty, were they to withhold the commendation justly due to those patriotic men, who, in the pursuit of wealth in a laudable business, have voluntarily established such regulations, to ensure, as far as practicable, to the children and youth under their care and in their employ, habits of industry, skill in an art or trade, decency of person and deportment, comfort, health, a moral, religious and business education—beautifully illustrating in their little communities the inestimable value of moral worth.

The inculcating and fixing in the minds of youth sound principles, likely to be handed through succeeding generations, and throughout all time produce a salutary influence, is in their opinion entitled to serious and respectful consideration.

History and observation has made it too public to require more than a passing notice, that the frequent wars and constant oppressions of Europe, have been to cast upon some of the nations immense numbers of bereaved children, without means of support or natural protection; and a vast proportion of those who would seem to have such protection, were in a worse condition than the orphan. Such a state of things has been to fill the workshops with these unfortunate beings, driven to extremity for a pittance, barely sufficient to prolong a miserable existence. On the other side of the Atlantic, the examinations into these matters have developed the appalling fact, that thousands from severity and want of kindness and care, have fallen victims to early decrepitude, or premature death, to speak in mildest terms. Should the errors of the old world serve as beacons to warn the new to provide against such a state of things as there exist, it would so far be well.

The universal opinion at this day requires no argument to establish it, that in proportion as each state shall foster its own resources, and bring into well directed action the best energies of their whole population, will be the success of the great republic. The State of New-York, holding so conspicuous a station in the great family, should not lose sight of what ought to be paramount considerations; that all her public acts should bear the test of the strictest scrutiny, and be worthy of imitation. However humble this matter may appear, the committee still entertain the opinion that



legislative aid might be essentially useful in carrying out the principles of our free institutions, without severe penal codes, or infringement of the rights of any. Not against the discreet and just are legal restraints or impositions required, but against that over-reaching avarice wedded to power, ever exercising oppression and harm.

Frequently the calling of attention of a just and reflecting people to an important subject of general import, is to establish a moral code, beneficial to community, adding character to the State. Nor can it be less creditable or desirable, where humanity is united to a sound policy. To exercise a supervisory and paternal care, in favor of those who need protection and care and have it not, nor know where to seek it, would be to brace and embellish the structure of our free institutions, and timely come in aid of that laudable spirit so frequently presented in the numerous public and private charities, leading from vice and degradation the unfortunate children of want: kindly preparing them to embark in pursuits adapted to well doing. Sustained, elevated and encouraged for a time, under the fostering care of a pure philanthropy, and brought within sight of an opening door of a better prospect, cruel indeed would be their lot, if, by neglect and desertion, they should be left to fall back.

In the absence of precedent, experience and that full knowledge which ought to direct, the committee are aware of the difficulty of framing a law fully meeting the requirements of the case: they are also aware that the bill herewith is far from perfect, or meeting the exigencies of the case; but, impressed with the importance of the subject, leave is asked to present it, in the hope it will receive the consideration and improvement which the merits of the subject may require.

T. SMITH, *Chairman.*



**No. 309.**

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**IN ASSEMBLY,**

**April 24, 1832.**

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**REPORT**

**Of the select committee on the Resolutions of the  
Assembly of the 3d and 8th February last.**

Mr. Spencer, from the select committee appointed in pursuance of the resolutions of this House of the 3d and 8th of February last, in the words following, to wit :

*Resolved*, That a select committee of five be appointed to examine the fee bills of all the officers, and of the attornies and solicitors of the courts of record of this State during the period of eight years last past, and that they have leave to report by bill or otherwise. February 3d, 1832.

*Resolved*, That the clerk of this House be directed to request the the Circuit Judges, the Clerks of the Supreme Court, the Registers in Chancery, and such other officers as the committee appointed under the resolution of the 3d February instant, shall direct, to furnish to this House a full statement of all the legal fees received by them in their several offices during the years 1830 and 1831, together with all the disbursements and losses connected with their offices. February 8th, 1832.

**REPORTED :**

That immediately after their appointment, letters were addressed by the clerk of this House to the several officers designated by those resolutions, and the committee have delayed making any report until the present time, in the expectation of receiving such statements from them as would enable the committee to present a full statement of the facts respecting which they were directed to examine. That although they have not yet received such statements from all

those officers, as are necessary to enable them to make a full report, yet as the subject is of considerable interest, and, as they believe, in some respects not generally understood, and the present session is rapidly drawing to a close, they have thought it expedient to report such information as they have been enabled to obtain.

That from all the Circuit Judges, answers have been received.

Upon examination of those communications, it will be seen that the estimates made by them of the incidental fees and perquisites of their offices, are entirely conjectural, as they have not kept any accounts of such fees : but taking those estimates as correct, it appears that the emoluments of their offices are but little enhanced from such sources. The greatest amount received in any one year, which was by the judge of the first circuit, he estimates at three hundred and fifty dollars, besides his fees as Vice-Chancellor, and those are not appurtenant to his office, since the appointment of a vice-chancellor, and the severance of that office from the office of judge of the first circuit. The smallest amount accruing during the same time for like services, has been to the judge of the fourth circuit, and is estimated by him at fifty dollars ; and the seven judges have estimated the whole amount of such perquisites at \$1,129.68, making an average to each of the judges, of about one hundred and forty-one dollars and twenty-one cents : Yet, as the services for which these fees are chargeable, are for the most part rendered for absent attornies, solicitors and counsellors, and not paid at the time, perhaps it is not unreasonable to make an allowance of twenty per cent for delay, loss, and trouble of collection, which will reduce the actual receipts to an average of about one hundred and nineteen dollars per year ; a sum so small that, in the opinion of your committee, it is desirable rather to increase than to reduce it.

A communication and report from James Porter, Esq. Register in Chancery, also referred to your committee, and annexed to this report, has received their most deliberate attention. That report states the whole amount of fees and perquisites of that office, for six months immediately preceding the first day of January last, at one thousand nine hundred and twenty dollars and eighty-three cents ; and his official disbursements at \$782.68 ; leaving a balance of \$1,138.20. Your committee had long regarded the office of Register in Chancery as one of the most profitable in the State ; and were surprised to find the emolument stated at a sum so moderate. In order to satisfy themselves upon this subject, they have carefully

examined the statement annexed to the report, and attentively compared it with the papers on file and books in the Register's office. In this investigation they have received from the Register every attention and facility they could desire. He attended at the office, with his clerks, during the whole time the committee were engaged in the examination, and essentially aided them in prosecuting it to a satisfactory conclusion. In pursuing their inquiries upon this subject the committee caused the folios, contained in the several books of entries in the said office, made during the time stated in the said report, to be estimated and ascertained, and the papers filed within the same period to be carefully enumerated, and found both to fall short of the amount stated in the said report. They also examined the back and account books, kept by the Register, respecting the receiving, paying out and investing monies in the court of chancery; and, as far as they can judge, find them also to correspond with the said report. Several of the items contained in that report relate to the drawing and copying of decrees and orders, and copying of other papers, and sealing process, which are stated by estimation only; and your committee have no means of testing their accuracy, with certainty, as no accounts of such services are kept in the office; yet, after making careful inquiry, they are convinced that the amount of such services, as stated in the report, is not materially incorrect, but probably exceeds the perquisites arising from that source. And your committee are satisfied that the whole of the fees and emoluments of the Register, including his fees as clerk of the third circuit, did not, for the six months embraced, exceed the amount estimated in his report.

The committee, in the course of their examinations, ascertained that the present perquisites of this office were far short of its former emoluments, and they were naturally led to inquire into the causes which had produced such alterations. On referring to the Revised Statutes of this State, and considering the alterations made by them in the organization of the court of chancery, they readily perceived that great changes had been effected in the course of its business. Concurrent jurisdiction with the chancellor, in almost every case, was conferred upon the circuit judges, reserving the right of appeal to him from their decisions. These judges being distributed into every district in the State, and holding so many district equity courts, convenient to parties and counsel, as well as witnesses, afforded much greater facilities, in the prosecution of causes, than the more distant court of chancery, and soon became the general resort

for the commencement of suits. From their decisions frequent appeals to the Chancellor filled the calendars of that court with a great number of litigated causes, which engrossed most of its time, to the exclusion of a great portion of the ordinary business of the court. Consequently the Chancellor was compelled to send to the vice-chancellors much of the business originally commenced in his court, which was, by such means, soon changed from a court of original, to one almost entirely of appellate jurisdiction.

A reference to the calendars of the Court of Chancery will show a great reduction in the number of causes depending in that court since the Revised Statutes went into effect. At the March term, 1829, of that court, 260 causes were placed on the calendar, and 147 decrees were entered and enrolled. At the next August term 233 causes were placed upon the calendar, and 140 decrees were taken and enrolled. At the January term, 1831, but 101 causes were placed upon the calendar, and only 46 decrees entered; and at the August term, 1831, there were put on the calendar, 121 causes, and 49 decrees were entered; and that many of the causes at the two last mentioned terms are appeals. By these comparisons it appears that while the litigated business of the court was greatly increased, the number of causes depending before the Chancellor in that Court, out of which the Register's fees arise, has diminished more than one half, and it is believed his emoluments have been reduced in a still greater proportion. It has been before remarked, that a great part of the business of the court, originates in the courts of the Vice-Chancellors, and is brought before the Chancellor by appeal. In such cases all the papers are filed, entries made, and process issued from the Vice-Chancellor's court, until the appeal is filed. The cause is then heard before the Chancellor, and his decree most generally sends it back to the court where it originated, to be executed. The papers are all filed and the decrees enrolled there, and although the causes frequently require great labor and investigation, and take up a great deal of time in the hearing, yet the fees of the Register in them is but a mere trifle. To make room for this kind of business, almost all the ordinary business of the court which formerly originated before the Chancellor is excluded, which business was much the most profitable to the Register, constituted one large branch of the emoluments of his office, and is now almost exclusively confined to the courts of the Vice-Chancellors, except that arising within the third circuit.

Other important reductions in the perquisites of this office have been effected by the Revised Statutes, among which may be noticed the alteration in the practice regulating the enrolling of decrees, once a most important item in the fee bill; prior to the passage of those Statutes, all final decrees were required by law to be enrolled, and the enrollment embraced all the orders, introductory decrees and reports in the cause, together with the final decree: under the present regulation decrees are not enrolled unless the parties direct it to be done, and this is not required in more than half the cases decided, and in those only the final order or decree is enrolled, and the other papers and proceedings are merely annexed. The fees in the present manner of enrollment do not, as your committee believe, amount to more than one tenth of what they did under the former practice; and as not more than one half of the final decrees are ever enrolled, the fees for their services, once among the most important appertaining to the office, are now reduced to the small amount set out in the Register's report.

By the Revised Statutes, the folio for entering, engrossing, and copying, has been enlarged from 90 to 100 words without any increase of compensation. Reading, filing, and marking papers produced in court at terms or on motion days, is reduced from 20 cents to 6; attending court with pleadings and papers in a cause is reduced from one dollar to twenty-five cents; examining and signing final decrees, and taking the decree to the chancellor for his signature, is reduced one third. These, with other reductions in the fee bill, which might be stated, have, in the opinion of your committee, reduced the perquisites of this office more than one half.

To your committee, these causes appear satisfactorily to account for the great diminution in the income of the office of the Register, which has occurred, notwithstanding the great increase of equity business in the State. And they do not believe that the remaining perquisites of the office are more than a fair compensation for the services required, or will justly admit of any further reduction.

The attention of your committee has been directed by the Register to that part of his report which expresses an opinion that the six months included in the report affords a fair average of the proceeds of the office during the time elapsed since the Revised Statutes went into operation. This, he says, he finds on investigation, which he had not time to make before he reported, to be in some degree er-

roneous, and your committee entertain the same opinion. They believe that although in some important items the reduction was instantaneous, that in other respects a gradual declension in the income of the office has been taking place, as the business of the court has changed from its original to its appellate jurisdiction.

The committee have not received any report from the Assistant Register, but he has informed them by letter that the state of his health is so bad that he is unable to make one, having been confined to his house nearly all the time since the commencement of the session of the Legislature, by severe indisposition. But as the fees of the Register and Assistant Register are the same, the reduction of the fees by the operation of the Revised Statutes must equally effect that office.

Reports have been received from the clerks of the supreme court in the cities of New-York and Albany, and at Utica and Geneva; by which it appears that the fees of the clerk in the city of New-York amount, by estimation, to \$4,483, during the year 1831, and his official disbursements during the same time to \$2,080, leaving a balance of \$2,403.00; that the fees of the clerk at Geneva, for the year 1831, amount to \$2,568.68, and his official disbursements for the same time to \$688, leaving a balance of \$1,877.68; that the fees of the clerk at Utica, during the year 1830, amounted to \$6,208.51, and the disbursements during that time to \$1,100, leaving a balance of \$5,108.51, and that during the year 1831, they amounted to \$5,279.65, and the disbursements during that year to about \$1,100, leaving a balance of \$4,179.65; and that he estimates the nett proceeds of the office for the ensuing year, besides disbursements and probable losses, at a sum not exceeding \$2,000. The report of the clerk at Albany does not state the amount of fees which accrued during the years 1830 and 1831, and your committee are not otherwise informed upon the subject. He states his receipts during those years at \$5,027.07, and disbursements at \$2,550.41, leaving a balance of \$2,476.66; and he estimates the nett proceeds of the office for the ensuing year at \$2,130.96.

If these estimates are correct, if the losses in collecting are as great as they are estimated, and your committee are satisfied they must, from the nature of the case, be very considerable, the fees and emoluments of these offices do not, in their judgment, exceed a fair compensation for the services rendered.



**Your committee have also examined with great care and attention the fee bill as now established by law, and after the most attentive consideration, have come to the conclusion that no further legislation upon that subject is at this time necessary; and although they might be induced to offer some amendments, if the project for an entire new bill was before the Legislature, yet they do not discover any alteration which could be made sufficiently beneficial to justify unsettling a system established upon such mature deliberation, and in the whole so unexceptionable.**



**No. 310.**

**IN ASSEMBLY,**

**March 20, 1832.**

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**REPORT**

**Of the committee on towns and counties, on the petition of sundry inhabitants of the town of Hinsdale in the county of Cattaraugus.**

**Mr. Tilford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the town of Hinsdale in the county of Cattaraugus,**

**REPORTED :**

**That the population is 919 ; but as to the extent of territory, your committee has no legal knowledge. There is a map accompanying the petition, purporting to be a map of the said town of Hinsdale ; but whether the said town is one or twenty miles square, your committee has no legal knowledge, as there is neither survey nor certificate attending the petition. Your committee have unanimously recommended the adoption of the following resolution :**

***Resolved,* That the petitioners have leave to withdraw their petition.**



**No. 311.**

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**IN ASSEMBLY,**

**March 20, 1832.**

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**ANNUAL REPORT**

**Of Israel Sloan junior, inspector of beef and pork for  
the county of Onondaga.**

**TO THE HONORABLE THE LEGISLATURE OF THE  
STATE OF NEW-YORK.**

The undersigned does respectfully report, that from the first of January 1831, to the first of January 1832, he has inspected the following amount of beef and pork, to wit :

217	barrels	mess	pork,	worth	here	(per	barrel)	\$13,	is	\$2,821	00
349	do	prime	do	"	"	"	"	9,	is	3,141	00
79	do	mess	beef,	"	"	"	"	6,	is	474	00
239	do	prime	do	"	"	"	"	5,	is	1,195	00
<hr/>											
884	barrels.									\$7,631	00

That the amount of fees received for inspecting the above mentioned eight hundred and eighty-four barrels of beef and pork, after deducting expenses, is *sixty-one dollars and twenty-five cents.*

**Fees,..... \$61 25.**

**ISRAEL SLOAN, JR.**

*Dated Pompey, 10th February, 1832.*



**IN ASSEMBLY,**

**March 22, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on the petition of sundry inhabitants of the counties of Allegany and Cattaraugus.**

**Mr. Juliand, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to which was referred the petition of sundry inhabitants of the counties of Allegany and Cattaraugus,**

**REPORTED :**

**That the petitioners request the passage of a law appointing commissioners to lay out a road from Olean point to the village of Friendship ; and that a tax be levied and collected annually for the term of six years, on all lands lying within one mile of said road, to be laid out in opening and improving the same.**

**The petitioners do not state whether it would be desirable to have commissioners appointed to lay out the road, without the authority to impose the tax ; but the fact that they ask for the imposition of the tax, induces the belief that the road would not be opened without it.**

**Your committee would hesitate, under any circumstances, to recommend the imposition of a tax in the manner proposed ; but in the present instance, there is no evidence that notice of the intended application has been published in the manner required by law. Your committee therefore recommend the adoption of the following resolution :**

**Resolved, That the prayer of the petitioners ought not to be granted.**





**No. 313.**

**IN ASSEMBLY,**

**March 29, 1832.**

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**REPORT**

**Of the committee on colleges, academies and common schools, on the petition of Nathaniel Winslow and others.**

**Mr. M'Donald, from the committee on colleges, academies and common schools, to whom was referred the petition of Nathaniel Winslow and others, for the incorporation of the St. Lawrence association for the promotion of education,**

**REPORTED:**

**That the petition is not accompanied by the necessary certificates of the publication of notice, and the committee presume that such notice has not been given. They have therefore not felt themselves required to express any opinion on the merits of the application, and have instructed their chairman to offer for the consideration of the House the following resolution :**

***Resolved,* That the petitioners have leave to withdraw their petition.**



**No. 314.**

**IN ASSEMBLY,**

**March 29, 1832.**

**ANNUAL REPORT**

**Of Henry Strang, inspector of beef and pork in the  
county of Westchester.**

*To the Honorable the Legislature of the State of New-York.*

In obedience to the Revised Statutes, regulating the inspection of provisions, and requiring inspectors to lay annually before your honorable body all their official acts in that capacity, I, as an inspector of beef and pork in the county of Westchester, do report, that I have inspected during the year 1831,

120 barrels mess pork.  
102 do prime do.  
—  
222 barrels.

Inspection fees, 15 cents,.....	\$33 30
Coopering, pickling, &c. &c. 10 cents, ....	22 20
	—
	\$55 50
Value about.....	2,529 00
	—
	<u>\$2,584 50</u>

*Rye, January, 1832.*

**HENRY STRANG,**  
*Inspector of Beef and Pork.*



**IN ASSEMBLY,**

**March 30, 1832.**

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**REPORT**

**Of the committee on towns and counties, on the petition of sundry inhabitants of the town of Fort-Covington in the county of Franklin.**

**Mr. Tilsford, from the committee on the erection and division of towns and counties, to whom was referred the petition of sundry inhabitants of the town of Fort-Covington in the county of Franklin, for a division of said town,**

**REPORTED:**

**That they have had the same under consideration ; and it appearing to your committee that the division sought for is unadvisable, it would put both of the towns in a very inconvenient shape for the transaction of town business. This, together with the fact that the petitioners have not complied with the statutes, in furnishing a sworn survey and map of the proposed division, your committee therefore recommend the adoption of the following resolution :**

***Resolved,* That the petitioners have leave to withdraw their petition.**



**No. 316.**

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**IN ASSEMBLY,**

**April 2, 1832.**

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**REPORT**

**Of the select committee, on the petition of the trustees of the village of Canandaigua.**

Mr. Granger, from the select committee to which was referred the petition of the trustees of the village of Canandaigua, asking leave to organize a hook and ladder company,

**REPORTED :**

That the petitioners represent that they have supplied said village with hooks and ladders, which had become necessary from the frequent and destructive fires with which that village has been visited, but which have been rendered nearly useless for want of a proper organization of those to whom their management is entrusted ; and the said trustees ask permission to perfect such organization, which can only be done by legislative enactment, which in the opinion of your committee is proper : They therefore ask leave to introduce a bill.





**No. 317.**

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**IN ASSEMBLY,**

**April 2, 1832.**

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**REPORT**

**Of the select committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York.**

**Mr. M'Keon, from the select committee to which was referred the memorial of the mayor, aldermen and commonalty of the city of New-York, praying for an extension of the fire limits in said city,**

**REPORTED:**

**That the petitioners represent that applications have been made to them to procure certain extensions of the fire limits in said city. Public notice has been given, requiring those having any objections to such extensions to offer the same. No objections have been presented; and on a careful examination of the whole subject, it has been deemed expedient to extend the fire limits in the city of New-York.**

**The committee are of opinion that the prayer of the petitioners ought to be granted, and have directed their chairman to report a bill.**



**IN ASSEMBLY,**

**April 9, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the village of Flushing in the county of Queens.**

**Mr. King, from the select committee to which was referred the petition of the trustees of the fire company, and others, in the village of Flushing in Queens county,**

**REPORTED :**

**That the said company was incorporated in the year 1809, and a small engine procured, which required the service of only eighteen firemen ; that recently an engine of the largest size has been purchased, and that the present number of firemen is inadequate to the working of the same. Your committee therefore think it reasonable, for the reason above named, that the number of firemen should be increased to twenty-five, and have accordingly directed their chairman to prepare and present a bill for that purpose.**



**No. 319.**

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**IN ASSEMBLY,**

**April 11, 1832.**

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**ANNUAL REPORT**

**Of Gilbert Oakley, one of the inspectors of beef and  
pork of the county of Westchester.**

**I, Gilbert Oakley, do certify, that the following is a true statement  
of provisions inspected by me during the year 1831, together with  
the fees derived therefrom, and the probable value thereof, viz :**

62 barrels mess pork, at \$13.00, .....	\$806 00
23 barrels prime pork, at 11.00, .....	253 00
67 barrels mess beef, at 8.00, .....	536 00
80 barrels prime beef, at 5.00, .....	400 00
<hr/> 232 barrels.	<hr/> \$1,995 00

**Fees for inspecting 232 barrels, beef at 12½ cents,  
and pork at 15 cents,..... \$30 12½**

**GILBERT OAKLEY, *Inspector.***

***White-Plains, April 4, 1832.***



**No. 320.**

**IN ASSEMBLY,**

**April 12, 1832.**

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**ANNUAL REPORT**

**Of the Albany Savings Bank.**

*State of the Funds of the Albany Savings Bank, on the 1st day of  
January, 1832.*

Due to depositors for principal and interest, on the 1st January 1831, (see last return,) .....	\$87,094 86
Deposited since the 1st January 1831, .....	81,817 12
Interest accrued since 1st January 1831, ..	\$5,051 82
Deduct interest received during the same period on canal stock, and the bond of the corporation of the city, (since paid,) .....	3,384 40
	<u>1,666 82</u>
	\$170,578 80
Drawn by depositors since 1st January 1831, .....	27,955 66
	<u>\$142,623 14</u>

**CONTRA.**

12,500 dollars 6 per cent canal stock, cost .....	\$13,437 50
22,750 dollars 5 per cent do " .....	22,207 64
Due for deposit in Commercial Bank, .....	106,978 00
	<u>\$142,623 14</u>

The whole number of depositors is 674.

**H. BARTOW, Treasurer.**





**No. 321.**

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**IN ASSEMBLY,**

**April 13, 1832.**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the town of Wilson in the county of Niagara.**

**Mr. Spencer, from the select committee to whom was referred the petition of the inhabitants of the town of Wilson in the county of Niagara, praying for the passage of an act authorising said town to pay an additional bounty on wolves,**

**REPORTED :**

**That your committee have had said petition under consideration, and find that the petitioners do not set forth how the additional bounty prayed for is to be raised. Your committee have presumed that it is sought to be raised by a tax on said town. No notices of publication of their intention to raise such tax having accompanied the petition, and your committee being of the opinion that such an act would be injurious to said town, by inviting the cupidity of unprincipled men in other towns and counties to impose by fraud and corruption upon the generous bounty of the town of Wilson, are of the opinion that the prayer of the petitioners ought not to be granted. Therefore your committee recommend the adoption of the following resolution :**

***Resolved,* That the prayer of the petitioners ought not to be granted.**



**No. 322.**

**IN ASSEMBLY,**

**April 17, 1832.**

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**REPORT**

**Of the select committee, on the petition of Henry Peters.**

Mr. Hughston, from the select committee to which was referred the petition of Henry Peters, for leave to erect a dam across the Delaware river at Deposit, and also the petition of sundry inhabitants of the county of Delaware, praying that Newel Evans may be authorised to construct a dam at the same place,

**REPORTED:**

That the committee have had the said petitions under consideration ; and on examination, find that an act was passed on the 12th of April 1822, entitled " An act declaring the Delaware river and its branches public highways." A provision is incorporated into this law, reserving the right of any person to erect and maintain dams across said river, in such a manner as not to obstruct the free navigation of the waters of said river with rafts or lumber, in the time of an ordinary freshet. It therefore appears to be unnecessary to legislate upon the subject. The committee recommend the adoption of the following resolution :

*Resolved,* That the petitioners have leave to withdraw their petitions.



**IN ASSEMBLY,**

**April 23, 1832.**

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**REPORT**

**Of the committee on charitable and religious societies, on the petition of the trustees of the Congregational Society of Centreville in the county of Allegany.**

**Mr. Downing, from the committee on the incorporation of charitable and religious societies, to whom was referred the petition of the trustees of the Congregational Society of Centreville in the county of Allegany,**

**REPORTED :**

**That the petitioners are possessed by a donation from the Holland Land Company of one hundred acres of land, which, from its location, and its present uncultivated state, is of but little or no advantage to said society ; and they therefore ask permission to sell the said land, with a view to apply the proceeds to the purposes originally intended by the donors. The committee have examined the subject, and while they fully approve of the design of the petitioners in this application, they believe it to be one of the cases requiring notices to be published of an intended application ; and no such notices having been given, the committee recommend that the petitioners have leave to withdraw their petition.**



**No. 324.**

**IN ASSEMBLY,**

**April 23, 1832.**

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**REPORT**

**Of the committee on charitable and religious societies, on the petition of sundry inhabitants of Petersburg in the county of Rensselaer.**

**Mr. Downing, from the committee on the incorporation of charitable and religious societies, to whom was referred the petition and remonstrance of the inhabitants of Petersburg, Rensselaer county, for an alteration of the charter of the First and Seventh Day Baptist Societies,**

**REPORTED :**

**That the committee have examined the said petition and remonstrance, and without expressing any opinions on the merits of the application, the committee believe it to be one of the cases requiring notices to be published of an intended application ; and no such notice being before the committee, they recommend that the petitioners have leave to withdraw their petition.**





**IN ASSEMBLY,**

**April**

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**REPORT**

**Of the committee on charitable and religious societies, on the petition of sundry inhabitants of the town of Utica.**

**Mr. Downing, from the committee on the incorporation of charitable and religious societies, to whom was referred the petition of sundry inhabitants of the town of Utica,**

**REPORTED :**

**That the petitioners are desirous of having an act of incorporation for charitable purposes, to be called the Utica Mechanics' Society. The committee have examined the subject, and while they fully approve of the design of the petitioners in their application, they believe it to be one of the cases requiring notices to be published of an intended application ; and no such notices having been given, the committee recommend that the petitioners have leave to withdraw their petition.**



**No. 326.**

**IN ASSEMBLY,**

**March 20, 1832.**

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**REPORT**

**Of the select committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York.**

**Mr. Varian, from the select committee consisting of the members attending this House from the city and county of New-York, to whom was referred a memorial of the mayor, aldermen and commonalty of the said city, praying for the passage of a law to authorise the mayor, aldermen and commonalty of said city to appoint an additional police or special justice, for the establishment of an additional or branch police office in the said city,**

**REPORTED :**

**The committee have examined the subject referred to them ; from which it appears that the memorialists have come to the conclusion that an office in the upper part of said city is necessary, being satisfied that it is for the benefit of the inhabitants, and the safety and security of its citizens.**

**Your committee deem it necessary to state, that the memorialists represent that the increase of population of said city is very great, and that the increase of crime in some degree is in proportion to the population. Your committee therefore are of the opinion, that a well organized police, in all cities that are densely populated, is for its better security and safety of its citizens. It also appears necessary that the police department should be so organized as to have an additional police establishment in the upper part of the said city, north of Grand-street, in addition to the present office now established in the City Hall. Your committee therefore are of the opinion to accomplish the above design, that it is just and proper that there should**

be an additional police justice appointed for the said purpose ; and as the number of police justices for preserving the peace in the city of New-York is now restricted by an act of the Legislature to the number of three, which appears to your committee to be insufficient to discharge the duties of the said offices of said city, your committee therefore recommend that a law may be passed, authorising the mayor, aldermen and commonalty to establish an additional police office, and to appoint such additional special justice ; and also to increase the number of marshals, not to exceed one hundred for said city. Upon the above statement of facts, which are believed by your committee, a bill has been prepared in conformity with the prayer of the petition, and leave is now asked to introduce the same.

**No. 327.**

**IN ASSEMBLY,**

**April 10, 1832.**

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**RÉPORT**

**Of the committee on colleges, academies and common schools, on the petition of sundry inhabitants of the county of Rensselaer.**

Mr. King, from the committee on colleges, academies and common schools, to whom was referred the petition of sundry inhabitants of the county of Rensselaer, for a general act authorising the incorporation of infant school societies, and other societies for the purposes of education,

**REPORTED :**

That the general subject of education, and the incorporation of seminaries for that purpose, are by law vested in the Regents of the University; who have, by the sixth article of the fifteenth chapter of the Revised Statutes, authority to receive the application of the founders and benefactors of any school established or to be established for the instruction of youth, on the system of Lancaster or Bell, or any other system of instruction approved by the Board of Regents; requesting that such school may be incorporated, nominating the first trustees, and specifying the name by which the corporation is to be called. And in case the Regents shall conceive a compliance with such request will be conducive to the diffusion of useful knowledge, they shall, by an instrument in writing, under their common seal, declare their approbation of the incorporation of the trustees of the school, by the name specified in such application; which request, and instrument of approbation, shall be recorded in the office of the clerk of the county in which such school shall be established: Upon which, the property and funds of such school shall be vested in the trustees so nominated, for the use and benefit of the school. Every school incorporated under the provisions of

**[A. No. 327.]**

this article, is made subject to the control and visitation of the Regents.

Under this view of the case, your committee are of opinion that the application of the petitioners would properly fall within the powers delegated to the Regents of the University, who being specially charged with the subject of education and of public instruction, are moreover furnished with authority to grant incorporations in the cases to which the prayer of the petitioners refers. Without, therefore, entering into the merits of this application, it may be sufficient to state, that however laudable the object of the petitioners may be, and it is admitted to be most worthy, and entitled to the highest consideration ; yet as the Legislature has vested in the Regents full powers to create, superintend, and direct the seminaries of learning above the grade of common schools, it is believed to be a safe rule to decline any interference with their acknowledged authority in these matters, and rather to leave all applications on the subject of the establishment and incorporation of schools to their exclusive decision. In presenting this view of the subject to the consideration of the House, they have directed me to recommend that leave be given to the petitioners to withdraw their petition.

**No. 328.**

**IN ASSEMBLY,**

**April 23, 1832.**

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**REPORT**

**Of the committee on charitable and religious societies, on the petition of the trustees of the Northeast Congregational Society of Bloomfield.**

**Mr. Downing, from the committee on the incorporation of charitable and religious societies, to whom was referred the petition of the trustees of the Northeast Congregational Society of Bloomfield in the town of Victor, Ontario county,**

**REPORTED :**

**That the petitioners represent, that ever since the erection of the said town of Victor in the year eighteen hundred and thirteen, the said society has been, and still is within the limits of the said town of Victor ; they therefore ask permission to change the name of said society, to that of the First Congregational Society of Victor.**

**The committee have examined the subject, and while they fully approve of the design of the petitioners in this application, they believe it to be one of the cases requiring notices to be published of an intended application ; and no such notices having been given, the committee recommend that the petitioners have leave to withdraw their petition.**





**No. 329.**

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**IN ASSEMBLY,**

**April 23, 1832.**

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**REPORT**

**Of the committee on colleges, academies and common schools, on the petition of the trustees of Geneva College.**

**Mr. King, from the committee on colleges, academies and common schools, to whom was referred the petition of the trustees of Geneva College,**

**REPORTED:**

That the committee have examined, with much care and great interest, the claim presented by the trustees of Geneva College, in behalf of that institution; and have had their attention drawn to a report made to the Senate of this State in 1827, by a distinguished and talented member of that body; in which report, which your committee ask leave to adopt as their own, the just and fair claims and expectations of Geneva College are presented and sustained with great clearness and ability. Concurring most cheerfully, as your committee do, in the views therein set forth, and avowing moreover their opinion that the cause of literature and science should at all times receive the confidence and support of an intelligent and educated people; yet they are admonished by the diminished condition of the General fund, not to press upon the Legislature at this moment the fitness and justice of extending to this institution the bounty of the State. An institution which, from its position, its past and present efforts to sustain itself, as well as its admitted ability to extend the cause of knowledge, will, as soon as the finances of the State shall authorise an appropriation, be entitled to the earliest attention and patronage of the Legislature. Your committee, therefore, for the reason assigned, leave this matter where they find it, and as they hope, without prejudice to such future decision therein as, under more favorable auspices, it is believed to be the interest and advantage of the State to adopt.



**No. 330.**

**IN ASSEMBLY,**

**June 21, 1832.**

**[SECOND MEETING.]**

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**MESSAGE FROM THE GOVERNOR.**

*Follow-Gentlemen of the Senate and of the Assembly.*

At the opening of your last session, it was expected that the National Legislature would apportion among the States the representation in Congress, at a day so early as to enable you before your adjournment to divide the State into suitable election districts. Our hopes in this respect were not realized; and after a very laborious session, you adjourned, at the usual time, having previously provided by law for a contingent postponement of the next election, in case an apportionment should not be made. Since your adjournment, Congress has acted upon this subject, and fixed a ratio of representation in the popular branch of that body, by which our State is entitled to forty members, whereby the law postponing the election is annulled:

On the occurrence of this event, I have, in obedience to my constitutional duty, as well as in compliance with your expressed wishes, convened you at this time, that you might provide for the exercise by this State of its full voice in the councils of the nation. As this was my motive for calling you together at this unusual and uncomfortable season of the year, so it is the only business pertaining to your duties within my knowledge, now so urgent as to justify me in the exercise of this power. I am happy to be enabled to say this, and to express the belief that the public wants will not require of you to sacrifice your personal comforts and private interests to the duties of ordinary legislation, through a protracted session.

There is one other subject, however, which I feel bound to present to your consideration, and which may be disposed of without

materially interfering with your special business, or prolonging your session. I allude to the supposed approach, at a time of unusual health within our State, of the Asiatic Cholera; a direful disease, which, having spread desolation over a great part of Asia, has advanced with rapid strides through Europe, and is now supposed to have crossed the Atlantic and to be frightfully busy in the work of death among our Canadian neighbors. It is certain that a very malignant disease, in its type resembling the much dreaded Cholera, is ravaging the hordes of squalid emigrants which have been recently disgorged from transport ships near our borders, and has been communicated from them to a portion of the population of the cities of Quebec and Montreal.

It has not been satisfactorily ascertained that the disorder has been communicated within our State, although a few cases of sudden death have occurred, which would not have attracted particular notice in ordinary times. Whether the disease which has proved so fatal in Canada is the Cholera, or has been produced by the very unfavorable circumstances under which an unusual number of the most destitute class of emigrants have been landed during warm weather, in a strange climate, cannot be known without a more minute and scientific examination of facts. But so far as facts have been ascertained, there is reason to believe that the two disorders, if of different character in other respects, resemble each other in these particulars, that they are caused by inattention to cleanliness, and by enfeebling dissipations and excesses, and may be communicated from one person to another in a tainted atmosphere. Cleanliness in and about houses and neighborhoods is believed to be the most effectual barrier against the spreading of this and other similar diseases.

Most of the emigrants who land in Canada direct their course towards the United States, with a view of settling there, and thus expose our fellow citizens to the contagion of diseases which they may bring with them. Heretofore it has not been deemed necessary to guard any avenue for the approach of infectious diseases, except the city of New-York, and our quarantine and health regulations relate chiefly to that city. No power now exists in any public officers or municipal authority elsewhere to interfere to prevent the introduction of disease into other parts of the State. We shall be annually exposed to similar incursions, and I respectfully recommend to you to pass such laws as may be necessary to enforce a sa-

native quarantine, at or near the other ordinary points of ingress to our State, and to invest the proper officers with sufficient power to act promptly and efficiently in times of alarm and emergency. An infinitely wise and just God has seen fit to employ pestilence as one means of scourging the human race for their sins, and it seems to be an appropriate one for the sins of uncleanness and intemperance; and when we can trace its existence and propagation under any circumstances to certain causes, it is our duty to employ suitable means to remove those causes and to arrest its progress.

Having thus discharged our duty, we may repose with confidence upon a power, wisdom and mercy beyond our control or comprehension, to bless our exertions and prayers, by removing from us in due time existing calamities, or by averting those which may threaten.

**E. T. THROOP.**

*Albany, June 31, 1832.*

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**No. 331.**

**IN ASSEMBLY,**

**June 22, 1832.**

**[SECOND MEETING.]**

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**REPORT**

**Of the committee on medical subjects, on so much of the Governor's message as relates to the Asiatic Cholera.**

**Mr. Milledoler, from the committee on medical subjects, to which was referred so much of the Governor's message as relates to the public health,**

**REPORTED :**

**That from all the facts which have come to their knowledge, they have concluded that the malignant epidemic which is prevailing in the neighboring province of Lower Canada, is essentially the same pestilence, which, originating in Asia, in its progress westward, has lately pervaded the continent of Europe, and which is generally called Asiatic or spasmodic cholera.**

**This disease your committee would represent as of a very alarming nature, acting destructively upon the human body, and in many instances meeting men as fire meets the stubble.**

**In all probability it has been brought over to America by emigrants lately arrived from Europe. Among these it has as yet mostly occurred, and upon them acted with the greatest severity. It is however by no means confined to the emigrants, but has spread among the natives of those districts in which it has been introduced, selecting its first victims from among such as are most exposed to its influence, and least able to resist its action.**

It was supposed before its arrival, that should it reach our continent, it would perhaps be so modified by locality and habits, as to assume a milder form, and to be of less extensive range. We regret to state, that thus far this expectation has not been realized.—From the latest official report of the medical authorities of Montreal, it would appear that the disease is more extensive in that city in proportion to the number of inhabitants than it was in Paris, where it prevailed more extensively than in other European cities.

Although there is likely to exist some difference of opinion among medical men as to the causes of its production, and the means by which it is spread, it is considered that a detailed discussion of this part of the subject would at present be not only inexpedient, but exceedingly ill-timed and injudicious. It is sufficient to observe, that by some, it is supposed to be propagated by contagion; and that others would ascribe its prevalence to a peculiar condition of, or a morbid something existing in, the atmosphere—a cause so far inscrutable as to elude our senses, and not capable of demonstration by any known forms of chemical investigation, but proved to exist from its obvious and peculiarly malignant effects.

Your committee are of opinion that under present circumstances it is prudent not to base our conduct in reference to this pestilence upon fanciful speculation or vague and exclusive theory, but to admit that both the causes mentioned exert an influence, and to take our measures accordingly. Your committee do therefore highly approve of those measures which have been officially recommended by the medical profession, and adopted by the civil authorities of some of our cities, for the purpose of disinfecting and purifying the atmosphere, and would recommend to the supervising officers of all our towns and villages to resort to the same appropriate means, in order to secure themselves, and those under their care, from the unmitigated influence of this destructive disease.

The committee would also state, that there is reason to believe that the epidemic cholera may be spread by contagion. That it may be contracted by a near approach to the persons of those laboring under the disease, and also of those who have been exposed to the infected atmosphere, but in whom the disease may not be developed; and also that articles of merchandize, dress, &c. which have been subjected to the same exposure are capable of conveying the poison, and exciting the disease, particularly in those in



whom, from any cause, there may exist a predisposition. If this opinion is correct or probable, it is all-important that the intercourse between healthy localities and the infected districts should be restricted.

The medical committee would therefore recommend the immediate passage of an act by the Legislature, conferring such powers upon our municipal officers as shall enable them to enforce strict quarantine regulations upon our frontiers and other parts of the State, and to continue them in operation so long as circumstances may require. It is also recommended to our fellow-citizens to aid the magistracy in carrying out such measures as may be adopted for their comfort and protection.

Finally, the committee would enjoin upon all to exercise prudence, and not to yield to an undue timidity, or to be agitated by unnecessary alarm, but to continue their confidence in that Almighty power which has heretofore preserved our land, and can protect us from this threatening calamity.

All which is respectfully submitted.

PHILIP E. MILLEDOLER, *Ch'n, &c.*



**No. 332.**

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**IN ASSEMBLY,**

**June 25, 1832.**

**[SECOND MEETING.]**

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**REPORT**

**Of the select committee on the petition of James Halliday, Jacob Ten Eyck and 672 others, on the subject of suspending the act for dividing the town of Bethlehem.**

Mr. Otis, from the select committee, to whom was referred the petition of James Halliday, Jacob Ten Eyck and 672 others, inhabitants of the town of Bethlehem, upon the subject of suspending the act for dividing said town,

**REPORTED :**

That the committee have had the matter of said petition under consideration ; that it appears a law was passed by the present Legislature on the 25th day of April, now last past, authorising a division of the town of Bethlehem, in the county of Albany, into two towns ; that the petition praying said division was presented to the House of Assembly on the 31st day of March last, and on the 3d day of April succeeding, a remonstrance against the division asked for, signed by a greater number of the inhabitants of said town than had signed the petition, was also presented, and referred to the appropriate committee ; that on the 11th of April thereafter, the petition was referred to a select committee, consisting of three members, with directions to report a bill complete. The next day this committee reported complete a bill for the division of said town, which was ordered by the House to be engrossed for a third reading ; which being done, was read a third time and passed by the Assembly on the 18th of April.

Your committee feel authorised to say, that the reference to the select committee, after the presentation of the remonstrance, was improper, and contrary to a rule of this House. Your committee are far from suggesting that this irregularity was produced by any improper design, but believe it came from the inadvertence and want of knowledge by the House, which results so naturally from this dangerous mode of legislation.

The reference which was given to this matter, had there been no remonstrance, would have been authorised by a usage of doubtful merit, existing in this House; but a remonstrance having been presented and properly referred, the reference of the petition to report a bill complete was irregular; and the honorable member who presented the remonstrance could have no reason to suppose that the bill could be acted upon without going through a committee of the whole, where its merits might be considered, and every member become acquainted with them. Had this course been taken, your committee have strong reason to believe that the bill would not have passed, as it is in evidence that the number of remonstrants was greater than the number of petitioners, and that in fact a great majority of the inhabitants who did not remonstrate were against the division of the town.

Your committee, from these facts, have come clearly to the conclusion, that the remonstrants are entitled to a re-hearing, or more correctly, to at least *a hearing*, before this law, of which they complain, shall take effect and remonstrance become unavailing. If by any inadvertence a matter has been decided without a full understanding of its merits, it certainly becomes the justice and the dignity of this House to furnish a prompt preventive for the evils that may ensue.

The petitioners ask for leave to test the opinions of the town by a vote of its inhabitants on the question of division, and in case a majority shall be found against it, that the law shall be considered as repealed.

Although your committee are desirous that the proper relief should be furnished to the petitioners, they incline to the belief that the mode pointed out in the petition would be indiscreet and of bad precedent. The Legislature is the only power on which the existence or destruction of a law can depend. And it would be indeed extraordinary if we, whose constitutional duty it is to decide

**upon the matter, and upon the whole matter, of a law, should allow it to be referred and settled by another tribunal, and to depend upon the will or judgment of any other than our own.**

**Your committee are satisfied, however, that a large majority of the inhabitants of said town are opposed to its division, and they therefore recommend a repeal of that law, both on account of the irregularity of its enactment, and its hostility to the wishes and interests of the people ; and they ask leave to introduce a bill accordingly.**



**IN ASSEMBLY,**

**June 25, 1832.**

**[SECOND MEETING.]**

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**REPORT**

**Of the committee on the judiciary, on the petition of the first judge of the court of common pleas of the county of Tompkins, for an alteration of the terms of said court.**

**Mr. Otis, from the committee on the judiciary, to whom was referred the petition of the first judge of the court of common pleas in the county of Tompkins, and others, praying the Legislature to alter the terms of said court,**

**REPORTED :**

**That, on investigation of the facts set forth in said petition, it appears that the terms of said court now commence on the fourth Tuesdays of January, May and September, respectively : that from Tuesday the first day of term until the Saturday following, the time is generally insufficient for the trial of all the issues of fact to be tried at the term, and the jurors are frequently obliged to return to court the week after. It is the opinion of the petitioners that if the terms were directed to be commenced on Monday, instead of Tuesday, the issues could generally be tried within the first week of term, and the expense and trouble of the return and attendance of the jury on the ensuing week dispensed with.**

**Your committee are of opinion that the prayer of the petitioners is reasonable and ought to be granted ; and therefore ask leave to bring in a bill accordingly.**





**No. 334.**

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**IN ASSEMBLY,**

**June 27, 1832.**

**[SECOND MEETING.]**

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**REPORT**

**Of the select committee to which was referred the memorial of Jacob Trumpbour and Holmes Hutchinson.**

The select committee to which was referred the memorial of Jacob Trumpbour, together with the papers relative thereto, and the counter memorial of Holmes Hutchinson, relating to the survey of the canals,

**RESPECTFULLY REPORT :**

That they have examined the claim of the memorialist, Jacob Trumpbour, and the counter memorial of Holmes Hutchinson, and endeavored to ascertain their respective merits. The inquiry assumed the aspect of a claim upon the State, in which the memorialists seemed equally desirous of shewing that they had faithfully performed their respective undertakings. In the furtherance of these objects each of them sought to bring into disrepute the plan upon which the other had conducted his survey, in order to secure a preference for his own. As these points were contested with the zeal usually accompanying controversies of this nature, it became difficult to limit the range of inquiry to the facts on which the merits seemed more immediately to rest.

Counsellors Jordan and Viele were the advocates of Jacob Trumpbour ; and Livingston and Cheever of Holmes Hutchinson.

. If the House should be of the opinion that more time has been spent in examining into the practical merits and utility of these surveys than was perhaps necessary or strictly defensible ; or on

the other hand, that less care has been paid to the precise facts on which the merits rested, yet nevertheless it is hoped, when it is recollected that the personal feelings of the memorialists were strongly enlisted, it will be sufficiently apparent that such an investigation, moving upon such subjects and motives, could not have been turned aside into any other direction by the committee without great and unreasonable harshness. The committee were also of the opinion that if the House saw, in the proceedings, any disposition to suppress inquiry, by which an apparent injury might chance to fall upon either of the memorialists, or the truth be concealed, it would be justly deemed a good cause to refer the subject again for further investigation. The committee have, therefore, afforded to the memorialists as fair an opportunity as they could to establish the allegations in their respective memorials.

By the Revised Statutes, first volume, page 218, part first, Chapter nine, title nine, sections four and five, the Legislature enacted as follows :

A complete manuscript map and field notes, of every canal that now is, or hereafter shall be completed, and of all the lands belonging to the State adjacent thereto, or connected therewith, shall be made, on which the boundaries of every parcel of lands, to which the State shall have a separate title, shall be designated, and the name of the former owners and the date of each title be entered. The expense thereof shall be paid out of the canal fund. If the Canal Commissioners, on examination of the premises, be satisfied that the cost and expense of making such map, field notes and survey will exceed the sum of five thousand dollars, no such map and field notes shall be compiled.

Every such map shall be compiled by the Canal Commissioners, who shall, for that purpose, cause all necessary surveys to be made ; when prepared, it shall be submitted to the Canal Board for its approbation ; and when so approved, shall be signed by the Canal Commissioners, be certified by them as correct, and be filed in the office of the Comptroller.

After the passing of the act, probably in the winter of 1828, Jacob Trumbour applied to the Canal Commissioners for information respecting the conditions on which they would receive proposals for the survey of the canals ; and was, by their answer, led to the conclusion that the proposals must be specific and in writing, where-

upon he made a proposition, in writing, to survey the Erie, Champlain, Oswego, Cayuga and Seneca canals; and make manuscript maps and field notes thereof, as contemplated by law, to be approved of by the Canal Board, for \$5,000, the sum appropriated by the act.

In the spring of 1829, he was informed that Holmes Hutchinson had submitted a proposal, amounting in substance to a proposition to perform the services required by the act for \$4,000, unless from actual vouchers for necessary expenditures upon the work, the Canal Commissioners should consider him entitled to further compensation, not exceeding in the whole the sum of \$5,000.

The Canal Commissioners considered this proposition of Mr. Hutchinson, which is particularly set out below, as more favorable to the State than that of Mr. Trumpbour, and so informed him. Upon receiving information of its purport, he suggested that it was a conditional proposition; whereas he had been limited to a specific one, and claimed the right of making another, conformable to the principles of that submitted by Mr. Hutchinson. The acting Canal Commissioners not recollecting that they had limited Mr. Trumpbour to a specific proposition, were unwilling to receive another from him for the survey, because he had seen the proposition of Mr. Hutchinson; but he insisted upon it, and they finally received another proposition from him in writing, enclosed in a letter of the following purport:

#### COPY OF THE LETTER.

*Albany, 28th March, 1829.*

CANAL COMMISSIONERS.

GENTLEMEN,

Having made a proposition to you better than a year ago, for surveying of the Erie, Champlain, Oswego, and Cayuga and Seneca canals, as contemplated by the last Revised Laws, for \$5,000; which proposition was for a specific amount, in consequence of a received impression that no other could be received for the undertaking by the Commissioners. Having yesterday seen a proposition made to them by a Mr. Hutchinson, offering to perform the said work for \$4,000, unless from actual vouchers for necessary expenditures upon the said work, they shall consider him entitled to additional compensation, which shall not exceed the ultimate compensation for said service of \$5,000, as limited in the act; which proposition, I understood, is considered to be more beneficial to the

State than mine, and is therefore considered as being entitled to be preferred to mine. I am therefore induced to trouble the Commissioners with a further proposal, to do the said work for such compensation as, from actual vouchers for necessary expenditures upon the said work, to be produced to the Canal Commissioners, they shall consider the same to be worth, and no more; and under no circumstances to exceed \$5,000. Enclosed you have my proposition.

Yours, respectfully,

JACOB TRUMPBOUR.

### COPY OF THE PROPOSITION.

To SAMUEL YOUNG,  
HENRY SEYMOUR,  
WILLIAM C. BOUCK, } *Canal Commissioners.*

I offer for acceptance, to survey the Erie, Champlain, Oswego, and the Cayuga and Seneca canals, and make a manuscript map and field-notes of those canals, as contemplated by 4th and 5th sections of the 9th chapter of the first part of the Revised Laws, to be approved of by the Canal Board; for such compensation for the whole of said service as the Canal Commissioners, upon the production of satisfactory vouchers for necessary expenditures in the performance of said duty, shall determine to be due; which shall not, under any circumstances, exceed the sum of five thousand dollars, as limited by said act.

Respectfully submitted,

JACOB TRUMPBOUR.

*Albany, 28th March, 1829.*

The testimony of Col. William C. Bouck, one of the acting Canal Commissioners, and secretary of their Board, places in evidence the following extract from the minutes of the Board of Canal Commissioners. See his deposition, No. 14, at the end of this report.

*At a meeting of the Commissioners, held in the city of Albany,  
on March, 1829.*

Present—SAMUEL YOUNG,  
HENRY SEYMOUR, and  
WILLIAM C. BOUCK.

*Resolved,* That David S. Bates be employed as a principal engineer, to make the necessary surveys, estimates, maps, &c. for a canal from Binghamton to the Erie canal; and that he be paid for said services at the rate of two thousand dollars per annum, including expenses.

**Resolved,** That Holmes Hutchinson be employed to make a survey, field-notes and maps of the Erie and Champlain, Oswego, and Cayuga and Seneca canals, in pursuance of the several provisions of chapter 9, title 9, and article first of the Revised Statutes ; and that he be paid \$4,000 for said services and all the attending expenses, and such further sum, not exceeding in all \$5,000, as may be necessary to cover proper disbursements.

**Resolved,** That said survey and maps shall include all feeders, and their appendages : The boundaries of the canal shall extend from the foot of the outside slope of the banks ; and where there is no embankment, the lines are to include a space of five feet on the berm side, and twelve feet on the tow-path side : To include all basins and slips made at the expense of the State, and also those made by individuals ; all lands purchased by the State, and edifices, artificial channels for conducting water from culverts, waste-weirs and weigh-locks, streams passing the line of canal, and all lands flowed by water are to be included on the map, and all hydraulic erections which are supplied with water from the canal, and the owners' names.

W. C. BOUCK, *Secretary.*

The following is a copy of the proposition submitted by Holmes Hutchinson to the Canal Commissioners, and accepted by them as stated in the preceding resolutions. This proposition was placed in evidence, by the testimony of Jonas Earll junior. See his deposition, No. 21 ; that is to say :

*To the Honorable the Board of Canal Commissioners.*

GENTLEMEN,

I propose to make the survey, field-notes, and maps of the canals now constructed in this State, the Erie, the Champlain, the Oswego, and the Cayuga and Seneca canals, and all the lands connected therewith, as contemplated by section 4, article 1, chapter 9, title 9, of the Revised Laws, for the sum of four thousand dollars ; on condition, however, that the Canal Commissioners will allow me a further sum not exceeding the appropriation, provided it should cost me more than the above sum of four thousand dollars, and that I can make it appear satisfactorily to them that such is the case.

HOLMES HUTCHINSON.

February 14, 1829.

Accepted,

*By the Canal Commissioners.*

It will be perceived that the above resolutions bear date in March 1829 ; but the committee could not ascertain the particular day in which they were passed. As the first resolution relates to the proposed route of the Binghamton canal, the committee conclude that it must have been after the passing of the act by which that survey was authorised ; which act, by a reference to the Session Laws of 1829, page 135, appears to have been passed on the 24th day of March of that year. The resolutions contained in the above extract must therefore have been passed after the 24th day of March ; but whether before or after Mr. Trumbour submitted his second proposition, is not ascertained ; but it seems reasonable to conclude, that it was not until after : for if they had passed before, the question would have been closed, and the door shut to all subsequent propositions, which has not been pretended ; but on the contrary, the objection to receive Mr. Trumbour's second proposition was, that he had seen Mr. Hutchinson's, and thereby became acquainted with its principles and terms.

The committee freely admit, that the Commissioners had an undoubted discretion to take into their consideration the qualifications of the persons offering to contract for the surveying and mapping of the Erie, Champlain, Oswego, and Cayuga and Seneca canals ; and that they were not bound to take the lowest estimate, if in their judgment there were other circumstances forming a just equivalent ; but they trust it will not be deemed intrusive in them, to submit a remark upon the nature of these particular propositions, with regard to which, it seems to have been well understood in the outset, that the objects of the statute could not be effected at an expense less than the appropriation, being five thousand dollars. Mr. Trumbour offered to do it for this specific sum. Mr. Hutchinson's proposition was so framed, that while it seemed to be an offer to perform the duties required by the act for a smaller compensation, yet, nevertheless, contains such provisions as would, in the event of obtaining the contract, enable him to secure the whole appropriation as a compensation for the services ; and we see in the deposition of the Comptroller, that \$3,000 dollars have been charged in the books as paid to him, but which is supposed to include the five hundred dollars paid by Mr. Seymour to Mr. Trumbour, for which Mr. Seymour took Mr. Trumbour's notes, and endorsed them over to Mr. Hutchinson.

The committee think Mr. Hutchinson's proposition was substantially an offer to make the surveys and maps for \$5,000, and ought to have been so considered ; that Mr. Trumpbour's second proposition amounts to the same thing, and they have no doubt but that both of these gentlemen so considered it when they made these propositions. This construction accounts for Judge Trumpbour's declaration, that he did not want, and would not undertake the service for less than that sum. The reason is manifest, it could not be done according to the requirements of the act, at a less expense.

Considering the nature of the first propositions of the memorialists, and that Mr. Trumpbour, after he had seen Mr. Hutchinson's, insisted on making another, we are not only led to the conclusion, that whatever propriety there might have been in regarding his first proposition, as entitled to a preference over Mr. Hutchinson's, for that because of its open and specific character, it laid no pathway for the introduction of an expensive controversy at the public charge, yet he must be regarded as having relinquished this ground, so far as it rested upon the specific terms of his first proposition ; but he does not appear to have abandoned the proposition itself, but rather to insist on his right of turning it into a conditional one, in consequence of a received impression at the time of making it, that none other could be received for the undertaking by the Canal Commissioners.

This reason assigned for having made his first proposal in the way he did, at a time when he was insisting upon the right to substitute a conditional one, the Canal Commissioners think is no evidence that he intended to be understood to intimate that, he had received the impression from them. The committee do not say, that the Canal Commissioners intended to convey such an understanding ; but it is sufficiently apparent in the testimony, that such an understanding was derived from them : and considering the situation and circumstances of the parties, the committee think the suggestion carries that conclusion with sufficient force and precision, not to be misunderstood. And also, that the expression that, " no other (than a specific proposition) could be received by the Commissioners for the undertaking," is a remonstrance, carrying the suggestion, that no other than specific propositions ought to be received ; couched, indeed, in such delicate language, as not to awaken the displeasure of the tribunal to which it was addressed ; neither is it intended now to occasion any such sentiment : but as this point was discussed in the



documents referred to the committee, they were naturally drawn to its examination.

Notwithstanding the resolution contained in the foregoing extract from the minutes of the Canal Commissioners, the committee are satisfied by the testimony, that such a modification of the transaction afterwards took place, that one-half of the contract was given to Jacob Trumpbour, with the concurrence of Holmes Hutchinson ; and that too under such circumstances as led him at the time of entering into the contract, to the conclusion, that he was contracting with the State in his own right, and not as a subcontractor under Mr. Hutchinson ; and that the resolution never was carried into effect in any other way.

Mr. Hutchinson, in his memorial, 10th page of the printed documents referred to this committee, No. 188, states that "In the month of April next following the presentment of the proposals above mentioned, the acting commissioner, Mr. Seymour, informed him at Utica that the Canal Commissioners had accepted his proposal for surveying the canals, and wished measures to be taken for the immediate execution of the work. Mr. Seymour likewise informed him that Mr. Trumpbour, of Kingston, was desirous of aiding in the survey, and inquired of him whether he would be willing to make an arrangement with Mr. Trumpbour to that effect ; observing at the same time, that both Col. Bouck and himself would be gratified to have Mr. Trumpbour accommodated. To which he replied, that he was unacquainted with Mr. Trumpbour, and therefore could not rely upon his ability as a surveyor, or his willingness to enter into the views, and to conform in every respect to the plan which he should pursue in making the surveys."

This remark of Mr. Hutchinson very naturally leads to another ; for if the circumstance of these gentlemen being strangers to each other was a good reason for so much caution on the part of Mr. Hutchinson, in respect of the plan to be pursued in making the survey ; concerning which the committee are of the opinion that the statute does not delegate any other authority than such as was deemed requisite to secure a conformity to the plan specified in the act itself ; how much more reason would not Mr. Trumpbour have had for declining to make one half of these expensive and laborious surveys upon the personal responsibility of Mr. Hutchinson, of whom he had no knowledge ; still less can it be imagined that, under such circumstances, with his standing in the community, and



the statute before his eyes, he could have agreed to submit himself to the direction of Mr. Hutchinson to conform to such plan as he might be pleased to suggest, and thereby not only take the risk of the personal responsibility of an individual with whom he was not acquainted, but also of debarring himself of all hope of remuneration from the State, if the plan should be different from that prescribed in the statute.

By the foregoing extract from Mr. Hutchinson's memorial, it appears that when the Canal Commissioners communicated to him, that they had accepted his proposition for surveying the canals, they also informed him of their desire that the contract should be divided between him and Mr. Trumpbour. This seems to carry the conclusion that they had adopted his proposal, rather for the purpose of settling the basis of the agreement than for the purpose of giving it exclusively to him; notwithstanding the words of the resolution, if they were not qualified by subsequent transactions, would carry a different result; and the committee would have supposed the negotiations closed by that resolution, if the transactions both before and after its passage did not lead them to a different conclusion.

To this tendency is the passage in the third page of the report of the Canal Board, Assembly documents of 1832, No. 188, referred to this committee, where it is said :

“ Mr. Trumpbour has no reasonable cause for complaint that the Canal Commissioners refused to receive his second proposition, after the terms of Mr. Hutchinson's proposition were made known to him.”

“ It will be readily seen that if Mr. Trumpbour had been permitted to make a second proposition, Mr. Hutchinson might with the same propriety have insisted on making his second proposition, and thus each would have modified or altered his proposition so as to bring his offer within the terms offered by his competitor. This course could not have led to a satisfactory result, would have been unjust, and is contrary to all established usages on such subjects. The Canal Commissioners, in the opinion of the Canal Board, were entirely correct in refusing to receive a second proposition from Mr. Trumpbour; and having done so, it was their duty to consider Mr. Hutchinson as the contractor.”

The committee are inclined to adopt the opinion that the Canal Board did not intend the whole of the foregoing statement as conclusive in point of fact; but rather as matters of inference, tending as they supposed to carry the conclusions there expressed; not but that the committee fully agree in the propriety of the usage, that propositions made for contracts ought not to be disclosed to any other persons disposed to engage in the undertaking; but because they think there is some misapprehension about the facts stated in that part of the report.

Col. Bouck, in his testimony, Deposition No. 14, in answer to the second interrogatory: Have you within your possession or control one or more propositions made by Jacob Trumpbour to the Canal Commissioners, for surveying the said canals; or do you recollect that the Canal Commissioners received such propositions? made the following reply, &c.:

A. I have no such proposition in my possession nor under my control, only so far as I should have a right to demand them from my colleague, Mr. Earll, who I suppose has them. The Canal Commissioners received, I believe, two propositions for surveying the canals from Mr. Trumpbour.

3d Question. Do you recollect whether the said propositions corresponded substantially with those set out and referred to in Jacob Trumpbour's memorial, pages 15 and 16 of the printed Documents?

A. I have no recollection now of having seen the propositions referred to, since the winter of 1829. But I believe that what I stated to be the substance of a proposition in the latter part of the second paragraph of Mr. Trumpbour's memorial, at page 15, substantially comports with the proposition received from Mr. Trumpbour. I also believe that what imports to be a letter and proposition from Mr. Trumpbour, page 15 and 16, dated the 28th March, 1829, substantially comports with the letter and proposition received from Mr. Trumpbour.

4th Question. Are you, or have you been, and at what time, clerk of the Board of Canal Commissioners?

A. I am now secretary of the Board, and have been since the organization of the Board in 1827 or 1828.

In the letter from the Board of Canal Commissioners to the chairman of the committee on canals and internal improvements, dated Albany, April 8th, 1831, Document A., page 8, referred to the committee, is the following passage: "After Mr. Trumpbour's second proposition had been rejected, he was desirous that the survey should be divided, and that he should be permitted to take one-half of it without the consent of Mr. Hutchinson. This proposition was unanimously rejected as unjust, as the contract had been given to Mr. Hutchinson; but the acting Commissioners, with a desire to gratify the memorialist, agreed to such a division, provided Mr. Hutchinson could be induced to relinquish a share of his contract, and would agree with Mr. Trumpbour upon a uniform plan of executing the work. It was with this understanding, and with the further condition that the maps should be made on a uniform plan at Utica, under his immediate direction, that Mr. Hutchinson consented, on the request of the acting Commissioners, to allow Mr. Trumpbour to take one half of the contract."

In the deposition of Col. Bouck, before referred to, in answer to the 48th interrogatory, Can you now say with any certainty whether you saw Mr. Hutchinson in Albany between the first of March and the thirteenth of April, 1829, or whether you had any conversation with him during that period about dividing the survey with Judge Trumpbour? He replied:

A. I do not recollect distinctly whether I did or not. In my testimony of yesterday I conveyed the idea that the conversation with Mr. Trumpbour in relation to the division of the contract for making the survey was previous to a conversation on the same subject with Mr. Hutchinson, and that he (Trumpbour) expressed a wish that I should prevail on Mr. Hutchinson to give him a part of the survey. I now say that the conversation with Mr. Hutchinson in relation to a division of the contract with Mr. Trumpbour may have been previous to my conversation with Mr. Trumpbour, and in anticipation on my part of submitting such a proposition to Mr. Trumpbour; if so, the conversation as having been had with Mr. Hutchinson was after the terms of Hutchinson and Trumpbour's first propositions had come to my knowledge. The conversations referred to are now pretty strongly impressed upon my mind, but the time at which they were had I cannot now distinctly recollect.

Jacob Trumpbour, in his deposition before the committee, No. 29 of depositions, stated as follows:

**1 Q.** Before you presented your first proposition for surveying the canals, did any, and which of the Canal Commissioners state to you the manner in which the proposition ought to be made ; and if so, how ?

**A.** Before my first proposition was submitted, I had an interview with the acting Canal Commissioners, Col. Bouck stated that the proposition must be made for a specific amount. This interview was sometime in the winter of 1828.

**2 Q.** Was this statement made in the presence of Mr. Seymour ?

**A.** I do not recollect. I think he was not present.

**3 Q.** Did you at any time authorise or request Col. Bouck or Mr. Seymour to apply to Holmes Hutchinson for a division or participation in the contract for surveying the canals ?

**A.** I have no recollection that I ever did ; but to the contrary I know that it was suggested by one or the other or both of them, I cannot say which, that a division might be made.

Dr. William Campbell, in his testimony, (see depositions No. 13,) states that after the passing of the act for the survey of the canals, he was present at an interview between Henry Seymour and William C. Bouck, Canal Commissioners, Jacob Trumbour, David H. Burr and himself, in the city of Albany, relative to the survey of the canals ; and to the following

**Q.** Did the said Canal Commissioners, or either of them in that interview state the manner in which the propositions for surveying the canals must be made ? If so, what did he or they say upon the subject ?

He answered : " If I recollect right, Mr. Seymour said in answer to Judge Trumbour, that propositions must be definite or specific, and in writing. This response was made to us collectively ; we had some conversation about taking the job jointly."

**Q.** Did this conversation take place in 1827 ; if so, at what place ?

**A.** I think it was in 1828, at Lemet's boarding house, in Albany, where the Commissioners lodged.

It is apparent that Mr. Campbell is uncertain which of the Canal Commissioners it was, that said "the propositions must be definite or specific, and in writing;" but states the fact positively, that this response was given to the inquiry made by Judge Trumbour. The uncertainty in his mind was whether this answer was made by Mr. Seymour or Col. Bouck. Judge Trumbour also swears that this response was given to his inquiry; but he, though not recollecting by which of the Commissioners, thinks it was by Col. Bouck, because he does not remember that Mr. Seymour was there at that time.— But Dr. Campbell swears Mr. Seymour was there. Thus, though there is uncertainty as to which of the Canal Commissioners gave this response, there seems to be no room to doubt the fact that it was given. If so, when the Commissioners afterwards by oversight or forgetfulness, received a conditional proposition from Mr. Hutchinson, if it was right for them to entertain Mr. Hutchinson's conditional proposal after they had heard Mr. Trumbour's representation of the matter, it must have been equally right for Mr. Trumbour to turn his specific proposition into a conditional one, notwithstanding he had become acquainted with the terms of Mr. Hutchinson's offer.

The following is an extract from the testimony of Asa Starkweather, No. 5 of depositions :

14 Q. Did Mr. Bouck state to you what ought to be the form or character of the propositions, that is, whether they should be definite, or might be conditional?

A. He stated that it must be definite, but within the sum of five thousand dollars, limited for making and completing the surveys.

It further appears from Mr. Starkweather's deposition, that this statement was made to him after Judge Trumbour had submitted his first proposition to the Canal Commissioners, and before Mr. Hutchinson's was made to them.

The committee are entirely satisfied that these circumstances indicated to the Commissioners the propriety of dividing the contract between Mr. Trumbour and Mr. Hutchinson, as the readiest means of allaying the dissatisfaction that began to exhibit itself, they being the only persons that had made proposals, notwithstanding the contract had been held open for more than a year, the appropriation being considered too small by other surveyors.

Now, in Col. Bouck's deposition, above cited, in his sixth answer he says: "I should perhaps further state at this time, that after the acceptance of Mr. Hutchinson's proposition in the winter of 1829, the execution of the contracts for making this survey, and the disbursements necessary to be made under the contracts, were assigned to the charge of Mr. Seymour."

Here, we inquire what contracts? For if the whole survey had been given to Mr. Hutchinson there would have been but one contract; but if the survey was divided, as the committee are entirely satisfied it was, then the language of Col. Bouck is correct; for in that case there would have been two contracts for this authority to Mr. Seymour to act upon; one with Mr. Trumbour and one with Mr. Hutchinson.

The time here mentioned by Col. Bouck, "in the winter of 1829," is understood by the committee as intended by the witness to designate the period at which Mr. Hutchinson placed his proposition in the hands of the commissioners, and is in this respect believed to be correct. But the time when Mr. Seymour received the direction alluded to in this part of Col. Bouck's deposition is shewn by other circumstances to have been at a later period, and no doubt was after the second proposition of Mr. Trumbour had been submitted to the Commissioners. This circumstance shews the reason why the direction to Mr. Seymour referred to "the contracts," because two contracts were then in view.

The next step in the history of this transaction seems to be the entry on the execution of this duty by Mr. Seymour, and the statement of Jacob Trumbour in his memorial is corroborated, where he says that at a subsequent intercourse the acting Canal Commissioners acknowledged the receipt of the letter and proposition, of which the above are copies, and intimated that the survey might possibly be divided between himself and Mr. Hutchinson; and on the 12th day of April, 1829, Mr. Holmes Hutchinson called upon him in Kingston with a letter from Henry Seymour, Esq. acting Canal Commissioner, of which the following is a copy:

*Utica, April 7th, 1829.*

JACOB TRUMBOUR, Esq.

Dear Sir—The bearer is Mr. Hutchinson, who made proposals for surveying the canals. He will confer with you on the subject of dividing the job with you; and any agreement which you may make

with him, not more disadvantageous to the State than Mr. Hutchinson's proposition, will be acceptable to the Canal Commissioners.

With much respect,

Your obedient servant,

HENRY SEYMOUR.

Mr. Hutchinson, in his testimony, No. 27 of depositions, proves the genuineness of this letter, and he delivered it to Jacob Trumbour, knowing its contents at the time; and in answer to the 45th interrogatory, What did you mean in the former part of your examination, where you stated that Mr. Seymour had charge of the business of the surveys? he replied, Well, I supposed he had. When I saw Mr. Seymour at Utica, he told me the Canal Commissioners had accepted my proposition, and asked me whether I would be willing to divide the survey and allow Mr. Trumbour to have a part of it, and gave me the letter to Mr. Trumbour, and said there must be a perfect uniformity in the plan, and said he would execute contracts; and from this and other conversations I presumed he had the charge of the surveys. There are but two acting Canal Commissioners.

Hence it appears, that at the time the acting Canal Commissioners communicated to Mr. Hutchinson the acceptance of his proposition, the intelligence was not only accompanied with the suggestion of a division of the surveys between him and Mr. Trumbour, but also with the letter above set out; which, in the opinion of the committee, constituted Mr. Hutchinson the agent of the acting Canal Commissioners, to negotiate a contract with Mr. Trumbour in behalf of the State for the survey of one half of the canals; which facts, taken altogether, seem to amount to a sufficient indication that the Commissioners had determined to parcel out the surveys in separate contracts with the State to the memorialists, previous to their communicating to Mr. Hutchinson that they had accepted his proposition as the basis of those contracts. When, therefore, it is recollected that Mr. Trumbour was negotiating with the known and accredited officers of the State, and that the suggestion to divide the surveys originated with them, what views could he possibly anticipate different from those that were spread before him. We perceive, also, that Mr. Hutchinson here represents Mr. Seymour as speaking of the contracts, using the plural number, as Col. Bouck did in his deposition above referred to. So also Col. Bouck, in his 6th answer, in deposition, No. 14, says the execution of the con-



tracts for making this survey, and the disbursements necessary to be made under the contracts, were assigned to the charge of Mr. Seymour.

It further appeared in evidence, that Mr. Hutchinson, with the above letter of introduction and power, proceeded to the residence of Jacob Trumpbour, in Kingston, where they, under the authority of that letter, entered into the following written agreement, being the same set out in the memorial of Jacob Trumpbour, page 17 of Assembly Documents, No. 188, of 1832.

*To the Canal Commissioners.*

We agree to divide the survey of the canals at Canistota. Mr. Hutchinson to take the eastern part of the Erie canal and the Champlain canal, and Jacob Trumpbour to take the western part of the Erie canal, and the Cayuga and Seneca and Oswego canals ; each to be entitled to one-half of the \$5,000, or the one-half of the proposition as made by Mr. Hutchinson.

JACOB TRUMBOUR,  
HOLMES HUTCHINSON.

The committee are of the opinion that the signing of this instrument consummated the contract between the State and Jacob Trumpbour ; and that with this agreement in his hand, he was authorised to commence the survey of that part of the canals set off to him in it. It is fully proved that he proceeded in the survey with an honest fidelity and diligence ; but before following him thither, it is deemed expedient to set out some few facts touching the construction and performance of the contracts, which have been placed in evidence.

First—The statute must be regarded as the substratum ; to the principles of which the agreements and the execution of the work ought reasonably to conform. 1 Rev. Stat. page 218, section 4, requires a complete manuscript map and field notes, of all the lands to which the State have a separate title, adjacent to the canals, and appropriated to the use thereof, to be compiled ; on which the boundaries of every parcel of such lands shall be designated, and the names of the former owners, and the date of each title be entered. The fifth section requires the Canal Commissioners to cause all necessary surveys to be made for that purpose.



**Second**—The preceding extract from the minutes of the board of Canal Commissioners placed in evidence by the testimony of Col. Bouck, one of the acting Canal Commissioners, and secretary of the board, the following resolution :

*“ Resolved, That said survey and maps shall include all feeders and their appendages. The boundaries of the canal shall extend from the foot of the outside slope of the banks ; and where there is no embankment the lines are to include a space of five feet on the berm side, and twelve feet on the tow-path side ; to include all basins and slips made at the expense of the State, and also those made by individuals ; all lands purchased by the State, and edifices, artificial channels for conducting water from culverts, waste-weirs and weigh-locks, streams passing the line of canal, and all lands flowed by water are to be included on the map, and all hydraulic erections which are supplied with water from the canal, and the owners names.”*

This resolution shews the construction which the board of Canal Commissioners raised upon the statute at the time they accepted Mr. Hutchinson's proposition, as the basis of the agreement for the performance of the duties enjoined by the act. The committee, after a careful examination of the act, and a comparison of it with the terms of the above resolution, cannot perceive any material difference between them, except, that the resolution enumerates in details, what the statute seems to comprehend in more general terms. Neither have they been able to discover any distinction between the things to be included within the surveys, and those to be comprehended in the maps, but on the contrary the same descriptions and requirements are made with respect to both.

If it be admitted that the maps must include the boundaries of the property, then it must be also conceded that they must be ascertained by an actual survey, on the ground ; for what other purpose could the Legislature have directed the Canal Commissioners to cause all necessary surveys to be made, but that the boundaries to be exhibited on the map might be designated on the ground itself, by proper visible landmarks. This is the object of every survey of boundaries. For how else can encroachments be discovered and prevented. The committee think therefore, that they incur no hazard in saying, that both the statute and the above resolution require the actual survey and designation of the boundaries of the public

lands along the canals appropriated to the use thereof, by courses and distances, and visible and permanent monuments, on the ground itself, as has been heretofore used and approved in this State.

The investigation of this prominent point, naturally engrossed much of the care of the memorialists, and many facts have, by their diligence, been placed in evidence.

SIMEON DE WITT, Surveyor-General, was produced as a witness on the part of Jacob Trumpbour; his deposition, No. 3 of depositions, among other things, contains the following:

1 Q. Did Jacob Trumpbour call on you some time about May 1829, and consult you on the plan of surveying the canals to be adopted?

A. I do not recollect the precise time, but I understood it was previous to his entering on that survey. He then explained to me the plan which he meant to adopt, in performing that survey, and requested my opinion about it.

2 Q. What was that plan of survey which he so explained to you?

A. It was to make a survey of the ground which belonged to the canal by taking the courses and distances around it, making minutes of all permanent objects that lay in the way of his survey, or in its vicinity, and by taking cross measurements across the canal from object to object, to check his survey, and ascertain the bounds of private property along the canal; and in his report, to give with the map, written explanations and courses and distances.

3 Q. Did you approve of the plan as it was so explained to you?

A. I told Mr. Trumpbour that I thought his plan of doing the business would be perfectly satisfactory for the purpose for which it was intended.

14 Q. Have you examined the specimen and sample of a field book, presented by Mr. Trumpbour to the committee, marked, Exhibit I. 3d May, 1832, and also the rough draft of his map, to which the said specimen refers?

A. I have.

**15 Q.** Do the said specimen and map as far as they go, and so far as you have examined the same, show his survey of the canal to have been substantially according to the plan which said Trumbour submitted to you previous to his commencing his said survey in the early part of the year 1829?

**A.** They do. He explained to me in detail the principles upon which he intended to make his survey, and according to which he appears to have gone.

**16 Q.** Will you look at sec. 4, article 1st, title 9th, of chapter 9th of part first of the Revised Statutes, and state to the committee, whether in your judgment the said survey, map and field book conform to the requirements of the said section?

**A.** In my opinion they do, if the survey has been made correctly along the bounds of the property belonging to the State, and if the bounds of private property are accurately laid down or noticed.

**18 Q.** (By the committee.) What was the object of the legislature in directing that survey to be made?

**A.** It must have been to define the property of the State along the canal, by such means as would afford proper evidence at any time hereafter, if any litigation should arise with regard to the line dividing the property of the State from private property.

**19 Q.** Was that design coupled with an intention to ascertain private encroachments on the public land along the line of the canal?

**A.** In my opinion it unquestionably was.

Professor JOSEPH HENRY, was sworn as a witness on the part of Mr. Hutchinson. Mr. Henry was called to testify in reference to the variation of the magnetic needle as connected with land surveying; he is a gentleman of high attainments in magnetic science. The design seemed to be to shew that little reliance can be placed on the designation of boundary lines, run by means of the circumferenter, or surveyor's compass, because of the variations to which the magnetic needle is subject; in order as the committee understood, to draw therefrom the conclusion, that, Mr. Trumbour's survey could not be relied upon, because he had run out the boundary lines

by the chain and compass, with courses and distances on the ground ; notwithstanding he had noted and designated the same with the usual references to permanent visible objects, and setting stakes where they were needed, if no more permanent object was sufficiently near for that purpose ; but Mr. Henry's testimony, while on the one hand it fully shows the variations of the magnetic needle, yet on the other, it as clearly shows, in the opinion of the committee, that the usual method of surveying boundary lines by the chain and compass and designating them by proper land marks on the ground itself, is the best method in use among us. The following is from the latter part of his testimony : depositions No. 28.

17 Q. Would it not be more safe in the location of property in different places of the earth, where permanent objects are given to ascertain the variation of the magnetic needle by those permanent objects, than to be dependent upon the true meridian in all resurveys to be made in the neighborhood of such permanent objects ?

A. It is best to depend as little as possible upon the magnetic needle, and to be governed by the permanent objects noted in the preceding survey.

18 Q. By the committee : Could the true astronomical meridian be determined without the aid of celestial observations of some body having a determinate place in the heavens ?

A. No.

19 Q. By the committee : Suppose you were to run a new line, how would you do it, by the magnetic needle or the true meridian ?

A. If I were to run a line with a common circumferentor, I would run it from point to point as the needle directed, and mark such permanent objects as might be found in its course ; if none existed on the line, I would take an angle and distance from each extremity to such permanent objects as were near, and as surveyors generally do, so that it might be retraced without regard to the magnetic variation at any future time. By this means the line would be rendered, independent of the variations of the needle.

These questions were propounded for the purpose of placing in evidence the well known fact, that neither the astronomic meridian,

nor consequently any line upon the earth's surface, can be so well determined, nor when ascertained, so accurately and easily designated, as by reference to objects having known and determined places; and also to obtain the opinion of this scientific witness upon the present and long established method of surveying boundaries and designating them, in this State. The inner edge of the towing path, subject as it is well known to be, to continual variations, governed by no fixed or uniform principle, other than those which rise out of the fortuitous and casual incidents of usage and weather, frost and flood, can hardly be an object sufficiently permanent to afford the means of reference as to an immovable object, necessary to the accuracy of location, which we have been justly told, is of so great importance in these surveys.

**JOHN KIERSTED**, a witness, sworn on the part of Jacob Trumpbour, (see his deposition, No. 22,) deposed as follows :

**1 Q.** Are you a practical and professional surveyor; and how long have you been so?

**A.** I commenced a pupil with William Cockburn, in 1800, since which, I have been a practical surveyor.

**2 Q.** Have you examined the respective plans of survey, adopted by Jacob Trumpbour and Holmes Hutchinson, in surveying the canals of the State, together with their respective maps and field books?

**A.** I have, so far as they are here exhibited.

**3 Q.** Will you look at part first, chapter 9, title 9, section 4, of the Revised Statutes, and state to the committee which of the said plans of survey, you, as a surveyor, consider most conformable to the requirements of that section, and the reasons of your opinion?

**A.** I have examined that section of the act, and in my opinion it requires an actual survey of the ground of the State land along the canals, and a written description of metes and bounds, courses and distances, in the usual manner, and had I been called on to make the survey, I should have so performed it.

I do not conceive the survey of Mr. Hutchinson to be conformable to the requirements of the act, because it gives no actual location on the ground, by metes and bounds of visible monuments, de-

signating the division lines between the lands of the State and those of individuals: because also, his manner of taking offsets without taking the course of them by the compass, is, in my judgment, too loose for any survey. Besides his leaving the course and distance of the out lines to be ascertained by calculation, and depending upon the offsets, thus taken, not only requires great additional labor to make those calculations, but renders the out lines very uncertain.

I should prefer Mr. Trumpbour's plan of survey, for the following reasons: Mistakes may and often do occur in taking courses and measuring distances, and making entries in the field notes. A line run on each side of the canal, with occasional check lines across with the courses and distances, afforded infallible means of detecting errors as the survey progressed. No such check, nor any other check that I have been able to discover, is afforded by the plan of Mr. Hutchinson. Besides, I consider it very difficult, if not impracticable, from Mr. Hutchinson's map and field notes, to give an apt or intelligible description of the lands set apart from the several lots or farms of individuals.

Mr. Trumpbour describes the out bounds of the State property by courses and distances, giving permanent monuments at every necessary and convenient place, such as locks, waste-weirs, bridges, culverts, aqueducts, basins and buildings, and defines the lines upon the ground, by actual survey and measurement. He notes with precision all encroachments, by individuals, on the property designated as the State property; and his field notes furnish the means of making the required maps and descriptions precisely as he found things on the ground. The survey, maps and field notes upon his plan enable the agents of the State and the owners of private property to locate with precision at present, and to ascertain the lines hereafter, in case visible monuments should be lost.

4 Q. What, in your opinion, is the comparative expense and labor of executing the survey upon the different plans of Mr. Trumpbour and Mr. Hutchinson, including the returns of field books and maps?

A. I should say the manner in which Mr. Trumpbour has done his would be double that of Mr. Hutchinson's, and I do not know but that it would be more.

5 Q. What is the probable value of making fair returns, field books and maps of judge Trumpbour's survey?

A. I have made no particular calculation on it. To do it after the manner he proposes, I should say it is worth from twelve to thirteen hundred dollars; taking that part of the canal surveyed by him. This estimate does not include the cost of the survey and rough maps.

JAMES COCKBURN, a witness on the part of Jacob Trumbour, testified to the following, among other things :

1 Q. Are you a professional and practical surveyor; and if so, how long?

A. I am, and have been thirty-five years.

2 Q. Were you with Jacob Trumbour when he was making his survey of the Erie canal; if so, when and where; and did you observe his plan of surveying?

A. I was with him on the section of the canal at Port Byron, I believe in June, 1829, and did observe his plan of survey.

3 Q. Have you examined the respective plans adopted by Jacob Trumbour and Holmes Hutchinson in surveying the canals of this State, together with their maps, field notes and field books, so as to understand the different plans?

A. I have, and believe I understand them.

4 Q. Which of those two plans of survey do you, as a surveyor, consider most conformable to the requirements of the fourth section of part first, title nine, chapter nine of the Revised Statutes, and state the reasons of your opinion, fully and particularly?

A. I have examined that part of the act, and in my opinion it requires an actual location of the State property, along the line of the canal, on the ground, run and marked out; accompanying with the map and field-book, a particular description, with the boundaries of each man's lot by course and distance, in order to enable the State and the adjoining owner to know where the bounds are.

The survey of Mr. Hutchinson seems to me to be wanting in many places, according to my views on that subject. In the first place, the outer boundary lines of the State property, necessary for the canal, have not been run on the ground, which would also enable him to determine the interference with buildings, and so forth. The courses and distances of those lines are not given on his map, nor

field-book. The objects he has noted in his field-book, along the base line, afford no means to ascertain how far off the objects are, to the right or left, excepting the quoin posts of the locks. Also, erecting monuments at every exterior end of his offsets for the State property, are necessary acquirements in order to complete the survey.

Whereas, the survey of Mr. Trumbour presents to me to have avoided all these objections, where the survey of Mr. Hutchinson is wanting as above stated. If he has, as appears from his survey he has, run and marked out on the ground the outer boundary lines of the State property for the use of the canal, accompanying with the map and field-book a particular description of the State property by courses and distances, with monuments erected on the outer boundaries of the State property; their bearings to permanent objects, with courses and distances; their interferences with individuals on the outer boundary lines, such as buildings, &c. And he has also designated each parcel of land so taken for the use of the canal, from individuals; and noted all permanent objects along the canal, such as locks, aqueducts, culverts, waste-weirs, bridges and buildings, whenever the accuracy of the survey required it. He has run check lines across the canal, from one line to the other. And were I to have performed this survey, I should in conscience consider myself bound, in order to do justice to the people of the State of New-York, to have pursued the same plan of survey as now presented by Mr. Trumbour.

10 Q. What permanent monuments do you think it necessary to set at the angles of the exterior lines of the State property, to conform to the requirements of the statute?

A. In surveys made of the State property, they have generally adopted stakes or trees; and I should suppose, that in this survey, stakes at least ought to have been set where no permanent object was found.

JACOB CHAMBERS, a witness sworn on the part of Jacob Trumbour, testified as follows:—See deposition No. 25.

1 Q. Are you a practical and professional surveyor; and how long have you been so?

A. I am, and have been so about thirty-five years.



2 Q. Have you examined the respective plans of surveys adopted by Jacob Trumpbour and Holmes Hutchinson, in surveying the canals of this State, together with their respective maps and field-books?

A. I have.

3 Q. Will you look at part first, title nine, chapter nine, section 4th of the Revised Statutes, and state to the committee, which of the said plans of survey you, as a surveyor, consider most conformable to the requirements of that section, and the reasons of your opinion?

A. According to my opinion, Mr. Trumpbour's plan is most conformable to the letter of that act. The law appears to contemplate that the land belonging to the State, adjacent to the canals, should be set apart by boundaries; which I consider ought to be done by actual survey, which, according to Mr. Trumpbour's plan, is to locate those bounds on the ground by metes and bounds.

Whereas, on the contrary, I do not think, from the understanding I have of Mr. Hutchinson's plan, the survey will make out such boundaries as are contemplated in that section.

4 Q. Are you well acquainted with Jacob Trumpbour, and with his situation and usual business; and if so, how long?

A. I have been acquainted with him about thirty years. He is generally employed as a surveyor, and does a good deal of business of that kind.

5 Q. What is his character and reputation as a surveyor?

A. Uniformly good. (See his deposition No. 25.)

Mr. Trumpbour produces the following extract:

*"In Senate, 14th January, 1829.*

*"Communication from the Surveyor-General to the Senate.*

"The Surveyor-General, in pursuance of concurrent resolutions of the Senate and Assembly of the 17th and 18th April last, directing him to cause to be surveyed and ascertained the true boundary line between the patents granted to Alexander McKee and others, and the patent granted to Israel Spencer and others, &c., respectfully reports:

[A. No. 334.

**"That he employed Jacob Trumbour, one of the most experienced surveyors in the State, to make the surveys necessary to a compliance with the directions of the Legislature, &c." (Senate Journal of 1829, page 37 and 38.)**

**AUGUSTUS TREMAIN, sworn on the part of Jacob Trumbour (deposition No. 26,) among other things stated the following:**

**1 Q. Are you a professional and practical surveyor, and how long have you been so?**

**A. I am, and have been so rising of thirty years.**

**2 Q. Have you examined the respective plans of survey adopted by Jacob Trumbour and Holmes Hutchinson, in surveying the canals of the State, the map and field book on the Champlain canal, presented by Holmes Hutchinson; the specimen of field book, field notes and rough maps presented by Jacob Trumbour to the committee, so as to understand their different plans of survey?**

**A. I have examined, and think I understand their different plans.**

**3 Q. Will you look at part first, chapter ninth, title ninth, section fourth of the Revised Statutes, page 218, and state to the committee which of the said plans of surveying you, as a surveyor, consider most conformable to the requirements of that section, and the reasons upon which your opinion is founded?**

**A. I have examined that section of the act, and am of the opinion that it requires an actual survey by courses and distances of the exterior boundaries, of all the lands belonging to the State, adjacent to the canal or connected therewith; and such a written description by metes and bounds as will enable both the agents of the public and the owners of private property adjoining, to determine the boundary line between them, so long as the bounds erected by the surveyor shall remain; and in case any of the bounds or visible objects become obliterated, or removed, that such might be renewed by a re-survey, according to the field notes or record.**

**If I understand Mr. Hutchinson's plan of surveying, it is this: he commenced by running a line with courses and distances, which he denominates a base line, along the inner edge of the towing path. At each station of the alignment he bisects the angle with a line which he has measured each way to the exterior limits of the State**

property. At intermediate points, where a variation in the width of the State property rendered it necessary, he has taken offsets, at right angles with his base line, and measured them in the same manner as he did his bisecting lines. In his passage he has noted the distance on his base line, from his last station to where he passed locks, bridges, culverts, aqueducts, waste-weirs; and in like manner noted the distance at which he intersected division lines of farms, and crossed streams of water. Ponds, basins, and such parts of the canal as are much broader than its general width, he has surveyed in the usual way by courses and distances. In no other instance has he given courses, distance or description of bounds of the exterior lines of the State property, but has furnished sufficient data by which those courses and distances can be ascertained by mathematical calculation.

It appears from the map and field book of Mr. Trumbour, that he has surveyed on both sides of the canal the exterior lines of the State property, in the usual way, by courses and distances; and that he has taken the bearing and distance from definite points in his line, to locks, bridges, culverts, aqueducts and waste-weirs; and also to such other permanent objects, as were found adjacent to his line, such as dwelling-houses, stores, factories, meeting-houses, &c. And that he noted buildings standing upon his line, with the number of feet and inches which each encroached upon the State property. That he noted monuments at different stations. That, in making his survey, he has frequently taken check lines across the canal by course and distance, distinguishing the stations to and from which they were taken. He has noted the distance on his line at which he intersected division lines of farms, and crossed streams of water.

In accordance with what I have before stated, I should say the plan of survey adopted by Mr. Trumbour is most conformable to the requirements of the fourth section, referred to in the question; because it points out on the ground, by courses and distances, the exterior boundaries of the State property; and his field book, as far as I have examined it, appears to contain a full description of the survey, as taken on the ground.

I would give his plan the preference for another reason; check lines across the canal, at reasonable distances from each other, furnish data by which to determine, with a great degree of accuracy, whether the survey has been correctly made. This plan of survey

furnishes another check upon the work. Two surveyors, one on each side of the canal, moving at an equal pace, can conveniently inquire of each other their course and distance from the last station; and if the course across the canal at that station had been correctly taken, and their courses parallel, this would be a perfect check on the measurement, unless each party made the same mistake. The many references which Mr. Trumbour has made to permanent objects, by taking their bearing and distance, would very much facilitate the renewal of lost boundaries.

Whereas, by Mr. Hutchinson's plan of surveying, no means exist of detecting errors in the work, either in course or distance, should any have been committed. I do not discover, either upon his field-book or map, as far as I have examined them, any reference by course and distance to any permanent objects, unless quoin posts of the locks can be considered as such reference. His field-notes are concise, and his key or explanatory notes to the field-book and map, I think rather ambiguous; but if I do understand them, his base line at the locks can be correctly ascertained.

In order to ascertain the exterior lines of the State property by his map and field-book, it would be necessary first to ascertain his base line and its angular points, measure the length of the bisecting offsets, and lines connecting their extremities would be the exterior lines of the State property. The courses and distances of these exterior or connecting lines, can be determined on the ground by the compass and chain, if there is nothing to obstruct the view; but if so, the course must be calculated, and then run.

4 Q. What, in your opinion, is the comparative expense and labor of making and completing the survey, upon the different plans pursued by Jacob Trumbour and Holmes Hutchinson, including the returns, field-book and map?

A. Without going into a particular calculation, I should say Mr. Hutchinson's expense and labor would be about one-third of that of Mr. Trumbour's.

18 Q. In stating, as you have done, that you do not discover, in Mr. Hutchinson's field-book or maps, any reference to permanent objects by courses and distances, except to the quoin posts of locks, are the committee to understand that there are no references to other permanent objects? And further, does not the base line of Mr. Hutchinson's survey pass directly across the waste-weirs, aqueducts.

and bridges, in such a manner as to render a reference to them by courses and distances unnecessary?

A. To the first part of this interrogatory, the witness says, so far as I understand his field-book, I have not discovered any others. And to the residue, he says, I cannot say whether the base line passes over those objects or not, unless we are to understand that a line running along the inner edge of the tow-path, would, as a matter of course, pass over them.

19 Q. Will you look at Mr. Hutchinson's map, and say whether the base line does or does not intersect the line of each bridge, and is not the distance noted?

A. On the map, it appears that the base line does cross the bridges, but what part of the bridge, does not appear. The distance on the base line to the bridge, is stated or given from the last station.

34 Q. You say there is no check in the plan of survey adopted by Mr. Hutchinson; do you intend to say that the inner edge of the tow-path may not be used to correct the errors of the magnetic needle?

A. If the inner edge of the towing path were permanent, it would control courses and distances both, as they must always yield to permanent objects; but in running one line, if any errors are committed, I know of no means of correcting it but by a survey. This is what I mean in my direct examination.

35 Q. Can or can not the distance upon the base line along the inner edge of the towing path, be measured with more precision, and the location of that line be fixed with greater facility and exactness, by reference to permanent objects, than either of the exterior lines of the State property?

A. With respect to the first branch of the inquiry, it would depend upon the care and labor bestowed in running the lines. The location of the base line can be found with greater facility than either of the exterior lines, if there are an equal number of near and convenient permanent objects. But as to the exactness with which the work may be executed, I do not think there is any difference.

39 Q. Which of the two plans of survey, that of Trumbour or Hutchinson, furnishes the best means of correcting the variation of

the magnetic needle, when the permanent objects noted by each are taken into consideration?

A. Mr. Trumbour's.

40 Q. By Mr. Hutchinson's mode of survey, as it appears from his map and field book, what permanent objects would there be to regulate his survey upon that part of the Erie canal where there are no locks, as between Canistota and the first lock east of Utica, there being no locks for the distance of about forty miles?

A. Upon his plan, as he performed it upon the Champlain canal, I see no reference to permanent objects by which his line could be definitely determined or ascertained but at the locks.

41 Q. What objects are referred to in Mr. Trumbour's survey, by which the variations of the magnetic needle may be more accurately determined than in Mr. Hutchinson's?

A. Dwelling houses, meeting houses, sawmills, carding, machines, stores, bridges, culverts, aqueducts. Mr. Hutchinson not having noted those objects that I recollect, at the point of his line, so as to be able to locate the place definitively where his line passed them.

On the other hand, Mr. Hutchinson called several witnesses to sustain his plan of survey, to which end EPHRAIM BRACH was sworn testified as follows, that is to say,

1 Q. What is your profession? (See deposition No. 16.)

A. Surveyor and civil engineer.

2 Q. How long have you followed that profession?

A. About seventeen years since I first commenced the practice of surveying as a business or profession; for the last twelve years, or about that time, I have been employed as an engineer upon public works. During that time I have been employed upon the Erie canal in this State; upon the Schuylkill and Canestoga navigations in Pennsylvania, and upon the Morris canal in New-Jersey. I have also been employed as engineer in the survey of several rail-roads.

3 Q. Have you examined the map and field book of the survey of the Champlain canal, made under the direction of Mr. Hutchinson, and now exhibited to the committee?

A. I have.

4 Q. Have you made surveys for similar purposes?

A. I have.

5 Q. What plan did you pursue in your survey, and why? [This question is objected to on the ground that it is immaterial what plans he may have pursued.]

A. The plan I pursued was by running a base line upon the inner edge of the towing path; the courses and distances taken by the circumferentor, or ordinary surveyor's compass and chain; offsets made at each angle, bisecting the angle, and noting the distance from the base line to the exterior bounds of the land necessary for the canal; and noting also all permanent objects contiguous to, or connected with the canal, and their relative situation to the base line. I adopted that plan, first, as being in my opinion calculated to afford the best facility for ascertaining with the least difficulty at any future period the bounds of the public property; and secondly, as being the most economical.

6 Q. Does the survey of Mr. Hutchinson afford the means of ascertaining hereafter, with the necessary precision, the bounds of the canals?

A. I think it does, so far as I have examined it.

7 Q. Do you or do you not, consider the method pursued by Mr. Hutchinson preferable to that of measuring the exterior lines or boundaries of the canals by taking their courses and distances in the usual way?

A. I pursued the plan myself from the conviction of its being the most ready and correct way of ascertaining the boundaries.

8 Q. Will you state your objections to the method of measuring the out lines, as alluded to in the last question?

A. One great objection is the innumerable obstacles that are found at the outer edge of the canal banks, such as swamps, thickets, streams of water, and so forth, frequently occurring, which rendered it very difficult to run the correct line, and to measure correctly. In addition to that, the additional labor to execute this work and the consequent increased expense are another objection.

**Q.** In what respect do you consider the plan as pursued by Mr. Hutchinson superior to that of Jacob Trumbour, last referred to?

**A.** In the plan pursued by Mr. Hutchinson, the line is run upon the even and level edge and surface of the towing path. A careful reference is had to all convenient permanent objects, such as locks, aqueducts, culverts, waste-weirs and bridges; noting the particular distance of the locks from the base line, and of others on the base line; the intersection of the base line with the division lines between farms and parcels of land, with the distance from the outer bounds of the canal property, is also particularly noticed, by which, together with the offsets taken at each and all the different angles of the base line, furnishes ample data whereby to ascertain the exterior bounds of the state property, and to calculate the quantity of land taken from any individual, without the aid of a survey or surveying instruments, other than the measuring line. Every intersection of the base line with the division lines of lands, furnishes an object of sufficient permanence to ascertain the location of the different angles of the base line. The offsets from the base line being made from the bisected angles to the exterior bounds of the canal, the outer angles correspond with each other and with the curved line of the canal.

Whereas, in surveying the exterior lines of the canal, two distinct lines must be run, one upon each side of the canal; frequently over an undulating surface, sometimes behind high embankments, where but a very indistinct view can be had of the ground to be surveyed: consequently angles will not unfrequently occur on opposite sides which will not correspond with each other, nor with the general location of the work; and in many places the survey must necessarily be made on the towing path, and offsets taken to ascertain the outer bounds. The local or permanent objects to be referred to being at a greater distance and frequently upon a different level from that of a base line upon the towing path, the reference cannot be taken with as much facility and precision. The permanent objects upon the state property, together with the fixed points at the intersection of division lines, are in my opinion sufficient for all the purposes for which such objects are necessary, and constituting part of the canal, must necessarily be preserved. References to trees, stumps, stones, or even buildings are more uncertain, they being liable to decay or at any time to be removed; hence permanent ob-



*jects outside of the bounds of the public property, I think are but little to be relied upon.*

In giving my opinion, I do not wish to be understood, that a survey cannot be made at the exterior bounds of the canal banks, for I believe such a survey may be made to answer all necessary purposes; but I do say, that the survey can be made from the bare line upon the towing path with more accuracy and with greater facility.

11 Q. What is the object of making such canal surveys?

A. The object where I have had the direction of such surveys, has been to procure data to be preserved as matter of record, whereby to ascertain, at the present or any future period, the bounds of the property occupied by the canals.

12 Q. Have you examined some of the rough maps and field notes presented to the committee by Judge Trumpbour, so far as to become acquainted with his plan of surveying the canals?

A. I have examined, and I believe understand them, so far as they are indicated by the field notes and maps, without his personal explanation.

13 Q. Whose survey depends most for its accuracy on the magnetic needle, Mr. Hutchinson's or Mr. Trumpbour's?

A. That is more than I can determine; I believe both depend on permanent objects, noted along the line as a check upon the variation of the compass.

14 Q. Will you explain to the committee what permanent objects are noted in Judge Trumpbour's field notes?

A. So far as I have examined, I find buildings, bridges, stumps, trees, *stakes* and logs, referred to. Reference is also made to locks and to the canal.

15 Q. Do the minutes entered in Judge Trumpbour's field notes and map, indicate that very great care has been taken in making the survey?

A. I could not undertake to give an explanation or construction of his field notes. From the examination I have made, I think it  
[A. No. 334.]

subject to the same difficulties that I have previously described, in relation to the comparative merits of the two plans.

*On the part of Judge Trumbour.*

21 Q. What knowledge have you whether the reference to convenient permanent objects in the survey of Mr. Hutchinson, was carefully made?

A. None.

22 Q. Look at the map and field book of Mr. Hutchinson's survey, and point out any sheet or page thereof to the committee, where the distance from the intersection of his base line with the division line between farms, to the exterior bounds of the public property, is particularly noted?

A. I do not see it particularly noted.

23 Q. Could any person, whether a surveyor or not, ascertain the location and angles of the base line of Hutchinson's survey, without a compass, in any other way than by a reliance on the inner edge of the towing path?

A. I think not.

24 Q. Where is the inner edge of the towing path; is it upon the angle of the slope according to the transverse profile adopted in the construction of the canal?

A. It is on the side next to the canal.

25 Q. Is that angle preserved, or is it worn away by rains, by the travelling of men and horses, by the washing of the water of the canals, by the wearing of the towing lines, and other causes, so as in most instances to present a curve instead of an angle?

A. The angle is liable to be worn off by the towing line; in some instances it may be affected by rains. I do not know that it has been affected by the travelling of beasts in any considerable degree, in places where I have been acquainted. Neither do I know of any circumstance that has fallen under my observation, where the inner edge of the towing path has been materially altered from any of the above causes.

26 Q. If the angle of the towing path is worn off so as to present a curve instead of an angle, how would you ascertain in running along there, whether you were upon the angle?

A. I should be dictated in my judgment by the shape of the banks.

27 Q. According to Hutchinson's mode of survey, if you should err in relation to that angle, and get further from the canal than the true angle, would it not move the outer bounds of the public property proportionally?

A. It would.

36 Q. Do you consider it of any importance that the outer angles, or the angles of the exterior bounds of the canal, should correspond with each other; if so, why, and how, can they be made to correspond, when one exterior line is straight, and the other exterior line directly opposite, is crooked; or as different courses, by reason of having embankments, basins, coves, or the like?

A. I think it of the greatest importance that they should correspond with the canal and its banks; but not that they should in all cases be opposite each other: the situation of the work does not require or admit it.

37 Q. Is there any difficulty in running the exterior lines upon Trumbour's plan, in making the angles correspond with the canal and its banks?

A. I do not know that I have any answer to that, other than I gave yesterday, of the general difficulty of running the outer lines. I believe it may be done with tolerable accuracy by bestowing sufficient labor and expense.

38 Q. Do you not know, that upon Hutchinson's plan of survey, he is frequently under the necessity of surveying the outlines of the canal according to Trumbour's plan?

A. It is obvious from the map that the outer bounds are surveyed when there are ponds and basins, it could not well be done in any other way.

39 Q. Does the whole survey upon Hutchinson's plan, consist of a base line and offsets, except at ponds and basins; and does his

said base lines and offsets constitute any part of the out bounds ; and if not, are the bounds of the State property designated by them, or are they only the data given by which the said outer bounds may be ascertained ?

A. I believe, so far as I have examined it, the survey consists of a base line and offsets. If where these offsets were made, stakes were driven down, or other monuments placed at the end of each, then they constitute outer bounds ; if not, then it only furnishes data whereby to find the outer bounds.

40 Q. If stakes or monuments were so placed at the end of these offsets, are there any designations of the outer bounds intermediate those points ?

A. I do not know whether objects were placed or not.

41 Q. Would he naturally have so done according to that plan of survey ?

A. No, not unless some exigency required it particularly.

42 Q. Can you discover from his map and field book, that he did so in any case ?

A. I do not.

44 Q. If at any future time where no stakes or monuments remain on the outward boundaries, the question should arise ; whether an encroachment upon the state property complained of, was such or not, how would you upon Mr. Trumpbour's plan of survey ascertain the fact ?

A. I would ascertain it by a resurvey from Mr. Trumpbour's field notes.

JOHN B. JARVIS, a witness sworn on the part of Mr. Hutchinson, testified to the following facts, see his deposition, No. 19.

1 Q. What is your profession ?

A. Civil engineer.

2 Q. How long have you followed that profession, and on what works have you been employed ?

A. Between fourteen and fifteen years. I have been employed on the Erie canal, the Delaware and Hudson canal the Mohawk

and Hudson rail-road, and the Saratoga and Schenectady rail-road. On the two latter works I was and now am the principal engineer.

**3 Q.** Have you examined Mr. Hutchinson's maps and field books of the survey of the Champlain canal, now before the committee?

**A.** I suppose it is the book I have seen here in the committee room; I have looked at a few pages of it only, and cannot say I have examined further than to ascertain the plan upon which the survey was conducted, but not sufficient to give the details.

**4 Q.** Have you in like manner examined Mr. Trumbour's field notes and rough maps, and do you understand the principles upon which the two surveys have been made?

**A.** I have examined some of Mr. Trumbour's field notes that have been shown me here, and looked over a sample of his field book shewn me by him, and which is marked, Exhibit I., 3d May 1832; and also some of his rough maps; and from the examination, I suppose I understand the principles upon which both surveys are made.

**5 Q.** To which plan of survey do you give the preference? What are your reasons for the preference?

**A.** Where I have done surveying of that kind, I have always adopted the plan of a base line and offsets, as pursued by Hutchinson. I have given it a preference. I have thought there was greater accuracy obtained by that plan, in getting a correct measurement of the ground occupied. As the measurement of the base line is generally less obstructed by irregularities of ground and affords a more convenient reference to ascertain the lines of a canal, or similar works at a future day.

**6 Q.** Would not a survey of the Erie canal upon Mr. Trumbour's plan be subject to a great many difficulties from marshes, swamps, woods, thick brush, uneven land, and other obstructions in the line of the outward boundaries of the canal?

**A.** There are many obstructions of that kind in the line of the canal, which I should think would increase the difficulty of making an accurate survey.

7 Q. Would not an accurate survey upon Judge Trumbour's plan be extremely difficult if not impracticable, in many places along the line of the Erie canal, where the foot of the slope or out bounds of the towing path, embankment, or wall, is in the channel or deep water of an adjoining river; for instance Niagara river, and in crossing rivers and large streams; also in many places along the Mohawk river, as at Little-Falls, Devendorf hill, at the Great and Little Nose, and many other places?

A. I should consider it impracticable to run a line along the out bounds in many places. I am not particularly acquainted with the Niagara river; at the Little-Falls and Devendorf hill, the Great and Little Nose, and several other places at which I am acquainted, I should think it impracticable to run a traverse line along the out bounds.

8 Q. How would you make the survey in such cases?

A. I should do it by making offsets, and running the line on that part of the work where it was practicable, and from that line make offsets to the exterior bounds of the canal.

9 Q. How are the offsets made on Mr. Hutchinson's plan?

A. According to the plan as described, where it occurs at an angle in the base line, the angle is bisected; at other places at right angles with the bases.

10 Q. Is not the foot of the towing-path embankment at the places to which you have referred on the Mohawk, and where you say it is impracticable to run the out-lines, in the stream or bed of that river?

A. Yes.

11 Q. Is not the method of making an offset in the line which you have stated the proper one to be pursued in these places, the usual mode adopted by surveyors, where any insurmountable objects, as a stream or pond of water, occurs in the course of a line?

A. I consider so.

12 Q. When the offset is made at such places, in the manner by you suggested, may not the survey of the canal there be then as correct and perfect as if made upon the plan of Mr. Hutchinson?

A. I should think so.

**13 Q.** What surveys have you made upon the plan adopted by Mr. Hutchinson ; for what purpose ; under whose and what directions ?

**A.** I surveyed a section of the Erie canal under Judge Wright, then engineer, for the purpose of ascertaining the quantity of land to aid the appraisers. I also superintended the surveys of the Mohawk and Hudson rail-road, as chief engineer, under the direction of the directors, to ascertain the quantity of land required for the work, and to construct maps, as required by the charter ; and also the Saratoga and Schenectady rail-road, for the like purpose.

**14 Q.** In making those surveys, did you take the course of your offsets on the ground, and set stakes or monuments at their extremities, and what permanent objects did you note along the base line or upon the outlines ?

**A.** The offsets were taken at right angles with the base line. Where there was an angle in the base line at the offsets, the offset was taken at right angles with the course last run. We set stakes. We set stakes at the angles in the exterior line, in improved lands. All permanent objects were noted on the base line, and offsets were taken and noted to such other permanent objects as were within the exterior lines, such as locks, waste-wiers, aqueducts, bridges and buildings, if any occurred on the canal. I also noted in my survey all buildings on the exterior lines, and took the entire position of the building, so as to be enabled to designate it on the map, as it stood on the ground ; and noted what portion of it came within the ground taken, by feet and decimal parts. In making the offsets on the ground we took the courses by the compass.

**15 Q.** Does Mr. Hutchinson's plan of survey designate on the ground where the exterior bounds of the State property are, or merely furnish data, by which those exterior bounds may by measurement be ascertained ?

**A.** I do not recollect observing that there was any thing said about setting monuments or stakes in the out bounds ; nor do I recollect whether that was a part of his plan or not. I did not observe any thing of that kind in the description of his plan of survey. If no stakes or monuments were set, it could not be known on the ground that any survey had been made. The surveys would give the means of ascertaining the quantity of land taken, without setting

any stakes or monuments ; but it would not designate on the ground itself the bounds of the public land along the canal. To ascertain that, a new measurement of the ground would be necessary.

16 Q. Can you, from Mr. Hutchinson's survey, map and field book, or either of them, ascertain, without further measurements on the ground, how many feet and inches, or chains and links, any buildings along the canal encroach upon the State property ?

A. Not without it is described in the field book.

17 Q. By the committee : Does the field book contain any such description ?

A. I have not noticed any description in reference to buildings in the field book, but there may be such entries contained in it. My examination of it has been brief. In examining some cases upon the first sheet of the atlas of the survey of the Champlain canal by Mr. Hutchinson, I think it would be necessary to take a measurement on the ground from some offset, to ascertain the encroachment.

19. Q. Upon the plan of the field books and maps submitted, which survey does, in fact, most clearly designate by the maps and field books the exterior boundaries of the parcels of land taken by the State for the use of the canals ?

A. I am not sufficiently acquainted with the two plans to be very decisive on that subject ; but from what I have seen from the samples produced, there is more fullness in Judge Trumbour's specimens of field book, submitted, and should rather give it the preference over that of Mr. Hutchinson, submitted to me at the same time ; being that of Buffalo on the part of Judge Trumbour, and that of Whitehall on the part of Mr. Hutchinson.

The deposition of the Surveyor-General, above mentioned, also contains the following :

17 Q. Will you now look at the map and field book of the survey of the Champlain canal, exhibited to the committee by Mr. Hutchinson, and state the principles upon which they appear to have been made ; and also state whether, in your judgment, they conform to the requirements of the aforesaid section, together with your opinion of the relative merits of the two plans, to wit, that of Mr. Trumbour, and that of Mr. Hutchinson ?



A. I have examined Mr. Hutchinson's plan of surveying the property of the State, along and including the canal. It appears to have been this: To take the courses and distances along the inner side of the tow-path, and at every angle to have made offsets each way across, and measured the distance of the offsets, to the exterior bounds of the canal on the other side; and connected the points of those offsets by straight lines, as appears on the map. It appears that he noted the situation of permanent objects that came in the course of the survey; that he has noted the bounds of private property, wherever they have been crossed by his survey. He has taken the courses and distances around basins and other projecting waters, connected with the canals, and also the situations of waste-wiers, and waters entering the canal.

To the second branch of the question, I answer as before; if the lines and boundaries are accurate, and truly describe the State property, so as to ascertain the metes and bounds, the survey may answer the purpose of the law. Mr. Trumbour gives the metes and bounds in the usual way; and Mr. Hutchinson gives the points by which the metes and bounds may be ascertained. The map upon the face of it gives the metes and bounds, but the description does not.

The reason why Mr. Hutchinson has not given the metes and bounds in his description, as here mentioned by the Surveyor-General, is because he did not survey the boundaries, and therefore could not give such a description in his field book. Mr. Hutchinson surveyed the towing-path on that side of it which is next to the water in the canal. The blue lines upon his map representing the boundaries, are inserted to give the map a finished topographical appearance, and to exhibit a diagram or plot of the canal, and the lands appropriated thereto; but these out lines were not run on the ground, and probably no monument of Mr. Hutchinson's survey appears on the ground itself in the boundary lines, except in running round basins, slips, ponds, or such like places.

The great pains which Mr. Hutchinson has taken to prove by witnesses the innumerable difficulties of surveying the boundaries of the public property, as will appear by a reference to the affidavits, seems to have little other tendency than to shew the steady fortitude, and unyielding perseverance, with which that duty has been actually performed by Jacob Trumbour, according to the true con-

struction of the statute, and the design of the Legislature, so far as that could be done.

The committee have been thus particular in describing the respective plans of surveying and mapping the canals, as they understand that subject to have been placed before them by the memorialists. The difference between them is simply this : Mr. Hutchinson has surveyed the inner edge of the towing path, and has omitted to survey and designate the boundary lines, so that the question of boundaries is as much in the dark and unsettled as if Mr. Hutchinson's survey had not been made. Mr. Hutchinson professes to furnish data for settling or finding the boundary lines at any time hereafter. This, however, can only be done by means of another survey, and which must be commenced at the Quoin post of the nearest lock, although it should happen to be twenty miles distant from the particular piece of land, the precise boundaries of which it is desired to ascertain on the canal, unless indeed the parties are willing to designate the boundary by the fluctuating line of the inner edge of the towing-path, without the means of confining it to a permanent location.

Having thus commenced at the quoin post of the nearest lock, because the locks appear to be the only places where Mr. Hutchinson has given sufficient means to determine the location of his base line ; this line must be resurveyed, until the surveyor arrives in front of the property he wishes to locate ; he may then find the boundary line by offsets from the base line so resurveyed, and by this means ascertain the situation of the property he wishes to designate. On the other hand, Mr. Trumpbour surveyed the actual boundaries on both sides of the canal, and located them on the ground by visible monuments, and where there were no other landmarks, he set stakes in the usual and customary way of surveying boundaries.

The committee cannot hesitate to recommend the survey of Mr. Trumpbour to the favorable consideration of the House ; and they at the same time suggest that the amount of labor and expense necessary to perform the survey upon Mr. Trumpbour's projection, is at least twice that of Mr. Hutchinson's.

The Commissioners seem to entertain the idea that the design of the Legislature was, that the canals should be first surveyed, and when that is done, the Canal Commissioners should compile a map,

and the Canal Board then make choice of a plan, as appears by the passage in the report above alluded to, page 2. It is difficult, however, to imagine that the Legislature had such a design, as that the work should be first done, and the manner of doing it be determined after the work was finished. It is manifest that the survey must be made before the map can be projected. There would be, therefore, great injustice in employing surveyors to make the surveys, which amount to about one-half of all the labor and cost of completion, and then rejecting them because the plan was not approved, when no plan had been furnished.

If by the conformity so much insisted on, it is intended that Mr. Trumbour should make his survey conform to Mr. Hutchinson's, the committee are not able to perceive any good reason for such a requirement. The statute requires "the boundaries of every parcel of land to which the State has a separate title to be designated in the map and field notes." For this reason, Mr. Trumbour justly inferred that it was the design of the Legislature to have the actual bounds of the property run out and designated by proper and visible land-marks, as there could not be any description of boundaries in the field notes, without an actual boundary survey on the ground itself.

It may be proper to state here, that in running the offsets, Mr. Hutchinson did not take their courses by the compass, unless perhaps in some few instances, so that the offsets from his base line to the outer boundaries are not generally run by the compass, but by the eye; and in most cases, no monuments were set at the points of the offsets to shew where the boundary lines are. Hence it seems to be manifest, that Mr. Trumbour could not conform his survey to that of Mr. Hutchinson's, without abandoning the survey of the boundaries, and adopting the survey of the towing path, instead thereof.

It ought perhaps to be here stated, that Mr. Hutchinson's remark, that "offsets on either side were made in a specified manner, and the distances to locks, bridges, aqueducts, waste-swiers, culverts, buildings, and other permanent objects, carefully and correctly noted," does not apply to the designation of the boundary lines by these objects, because the distances between these objects and the boundary lines are not noted. But it is the distance between the base line run upon the inner edge of the towing path, and the quoin posts of the

looks, that is noted in the first instance; and in the second place, the distance at which those several objects are longitudinally situated from each other along the canal. The offsets allude to the crossmeasures, taken to shew the breadth of the canal, its embankments, borders, and other easements not designated by monuments on the ground, but by lines on the map.

Mr. Hutchinson's survey and delineation of the Champlain canal, was executed for him, chiefly under the care of Mr. Edwin F. Johnson, and his atlas is a very beautiful topographical map of that canal. Its practical utility is, as we have seen, a very different matter. Mr. Johnson was examined as a witness, and in relation to encroachments upon the State property, concerning which, he was inquired of, in the 49th interrogatory of his deposition, (No. 6,) he says in substance, "I was not directed to notice any interference or encroachment by the erection of buildings on the State property."

"The object of the survey was to obtain the means of determining at any future day, with the greatest practical degree of precision, the boundaries of the State property. It was with reference to that leading object, that all the measurements were made. A reference to the buildings, which at the time of the survey, stood within the outer or blue lines of the map, (which represent the outer or boundary lines of the State property,) was not generally made, because the buildings were the greater portion of them, groceries, sheds, &c. of a temporary structure, and could not be relied upon as permanent objects." But in answer to the 53d interrogatory he says, "the instances of buildings thus situated are, I believe, all exhibited on the map." It would seem, however, that the extent of the encroachments is not noted in feet and inches, or by other measurements.

The objects intended by Mr. Hutchinson to be accomplished by his survey and map, are here set out by the witness who made the survey for him, of his proportion of the canals. His design seems not to have been to ascertain and determine the boundary lines of the State property, or the extent of the encroachments which were made upon it, but to provide the means of ascertaining these things at any future day; so that instead of accomplishing at once the design of the Legislature, his survey lays the foundation of another, as the means by which it may chance to be accomplished; unless

the surveyor who may happen to be employed for that purpose, should in like manner render a third survey necessary.

The committee are nevertheless of the opinion, that it is expedient to protect the public property along the canals from encroachments, in order that adverse titles may not be obtained by intruders on the public lands, set apart for the purposes of the canals, by a continued occupancy thereof. This seems to be the more necessary, as buildings are annually erected in various places along the lines of the canals; and if there are no visible boundaries or landmarks on the ground itself, it cannot be doubted but that many encroachments will be made in addition to those which already exist.

It is not sufficient that a space merely wide enough for passage may be left; for when repairs become necessary, as they frequently do, it is requisite that there should be some place where materials may be laid without obstructing the navigation. The memorialists were prudently instructed by the Canal Commissioners, to make due allowance for these objects in their surveys, and to include sufficient ground for these purposes, which it is believed they have done.

The temporary buildings, such as groceries, sheds and the like, mentioned above to have been erected on the lands of the State in the vicinity of the canals, are of the kind most likely to be built by intruders on lands to which they have no title. Men do not construct costly edifices in such situations; and these light buildings are as good as any other for the purpose of instituting an adverse possession, and gaining a title by occupancy; and probably better, because of their humble character, as they attract less notice, and are therefore not so likely to be ejected by the owner of the land.

The committee are happy in perceiving that their views in respect to these encroachments, are in accordance with those heretofore entertained and expressed by the House of Assembly, and recorded in their Journals for the year 1831, page 785, in their proceedings upon the report of the committee to which the memorial of Mr. Spalding was referred, in the following resolution:

**“Resolved,** That it is the duty of the Canal Board, and the Canal Commissioners, to defend the canals and their appendages, from any unauthorised appropriation to the use of individuals; and to protect the grantees of the State in the rights conveyed to them.”

These are believed to be among the great objects which the Legislature sought to effect by this survey ; the plan, therefore, which best secures this result must be the most meritorious, and entitled to the preference.

The Canal Board, in their report, Assembly Documents, No. 188, March 7, 1832, page 2, say, "The members of the Canal Board met informally, in the winter of 1830, and at the request of Mr. Seymour, consented to hear the representations of Mr. Trumbour and Mr. Hutchinson, in relation to their respective plans for surveying and mapping the State canals, and examined rough drafts and sketches which were submitted ; but did not, as a Board, express any opinion, take any vote or give any directions in relation to this matter. By referring to the statute authorising this survey it will be seen, that this subject is not properly before the Canal Board, until the Canal Commissioners shall have compiled the maps and field notes, and submitted them for their approval."

It must be observed, however, that the statute requires the Canal Commissioners to cause all necessary surveys to be made for the purposes of the act ; hence it would seem to be their duty to provide a plan for the surveys, in conformity with the provisions of the statute ; and although the Board of Canal Commissioners did at first agree to, and lay down a plan for that purpose, with sufficient clearness and precision, as appears by the resolution herein before set out from their minutes ; yet they seem incidentally to have afterwards lost sight of it, and to have approbated Mr. Hutchinson's plan of surveying the tow-path instead of the boundaries, but without expressing any decisive opinion thereon ; this has no doubt occurred through misapprehension or oversight, in relation to the requirements of the statute ; or, what is perhaps more probable, from not fully comprehending the nature of Mr. Hutchinson's survey.

This brings us round to the point of departure, where we craved the liberty of stating a few facts before we followed Jacob Trumbour into the field, for the purpose of seeing the manner of his executing the survey ; and for this we submit no other apology than that it seems to be necessary to the ends of justice.

It is sufficiently proved that, at the time of entering into the contract, there was one or more conversations between Jacob Trumbour and Holmes Hutchinson, respecting the delineation or plan upon which the surveys of the canals should be conducted. There

was not any person present at those conversations, who has been examined as a witness, except the parties themselves; and they disagree respecting it. Mr. Hutchinson asserting that Mr. Trumpbour agreed to adopt such plan as he should thereafter mature and pursue; and Mr. Trumpbour alleging, that Mr. Hutchinson agreed to adopt the plan upon which he has executed his survey.

However this may be, it appears that after the contract was made for dividing the survey between the memorialists, sometime before commencing the work, probably in the month of May, Jacob Trumpbour, when on his way to the west, called on the Surveyor-General and consulted him respecting the manner of surveying the canals; and explained to him the principles of his plan, and received his approbation; the Surveyor-General being one of the Commissioners of the Canal Board, and as the committee think, the proper officer to be consulted, subject to the authority delegated by the act to the Canal Commissioners to cause the necessary surveys to be made. The plan which he then made known to the Surveyor-General was the same upon which he performed his survey of that part of the canals so set off to him.

In proceeding on he met with Henry Seymour, acting Canal Commissioner, at Rochester, and returned with him from thence along the line of the Erie canal, to Port Byron, and shewed him the above agreement made by him and Holmes Hutchinson; and he then received from Mr. Seymour his instructions in relation to the lands to be set apart for the use of the canals. He also explained to Mr. Seymour the plan of survey which he intended to pursue, to which Mr. Seymour made no objections. Afterwards, when he had just begun the survey, Mr. Seymour, who was superintending the canal, passing along for that purpose, came where Jacob Trumpbour was actually engaged in surveying the boundaries of the canal, saw him at work there, and was again informed by Mr. Trumpbour as to the nature of his plan of survey, and approbated the same. He also gave Mr. Trumpbour further instructions for the performance of the work.

The authority to make the surveys, being delegated by the statute to the Canal Commissioners, the directions given by them for that purpose before the work was begun, must therefore be regarded as within their legitimate authority under the act; and as a sufficient guide for the surveyor in the performance of the work. This di-



rection Mr. Trumbour received, and performed his work accordingly.

After Mr. Trumbour had performed about eight miles of the survey of the Erie canal, he having commenced at Port Byron on the twenty-fourth day of June, 1829, he fell sick, and his survey was suspended thereby until some time in the month of August in that year. During the time of that suspension, Mr. Hutchinson came to see him on the canal at Port Byron, and while there, they entered into conversation on the subject of the survey of the canals. In this conversation Jacob Trumbour explained to Holmes Hutchinson his manner of making the survey. He drew a sketch upon paper to show the manner, and with that explained to him, that he run a line on both sides of the canal. He also stated to Mr. Hutchinson that whenever he came to buildings encroaching upon the line of the canal, he noted them, and marked the number of feet they stood on the line he run. He explained to him how much he took on the tow path side, and also on the berm side, and stated to him that he took a check line across the canal to the station opposite as often as convenient; so as not to let one survey run ahead of the other, to keep the survey in check on both sides, and prevent mistakes. He also stated to him that he took an observation to a more permanent object than the stake itself, as often as he found such an object sufficiently near to the line, and noted the course and distance of those objects in his field book, to which Mr. Hutchinson did not make any objection, nor suggest any other method of survey. See William C. Trumbour's deposition, No. 9, where it is also stated that Jacob Trumbour pursued this plan throughout his whole survey, and finished his proportion of the canals sometime in or about the month of August, 1830.

In the mean time, about the middle of September, 1829, Mr. Hutchinson employed Edwin F. Johnson to survey the Champlain canal, and that part of the Erie canal which lies east of Canastota, who commenced the survey about the middle of October in that year. See the deposition of Edwin F. Johnson, No. 6, in the first part of it. Mr. Johnson being inquired of in regard to the plan upon which Mr. Hutchinson's survey was projected, whether it was suggested to him, or he first suggested it to another? see interrogatory 12, he answered. It was devised I believe, principally by myself, at the request of Mr. Hutchinson; and in the answer to the



next question he states the time when this plan of survey was adopted not to have been later than the 15th or 20th of September.

It also appeared that, at the time this new plan was adopted and made known to Mr. Trumpbour, he had surveyed about fifty miles of the canal on both sides of it; so that he had made a hundred miles of his survey of the boundaries, the labor and expense of performing which equalled that of two or three hundred miles of survey on the plan of Mr. Hutchinson.

Mr. Hutchinson having at this stage of the business determined, (whether inadvertently or otherwise, the committee suggest no opinion,) not to run out the boundary lines, and that fact being made known to Mr. Trumpbour, occasioned the present controversy between them.

As soon as Mr. Hutchinson had adopted the plan of surveying the towing path instead of the boundaries, and had ascertained that the majority of the Commissioners were disposed to approve of that plan in preference to the boundary survey, he required Mr. Trumpbour in like manner to change his plan, and to adopt the tow-path survey. To this Mr. Trumpbour could not be brought, neither by the authority of the Commissioners, nor by the influence or kind offers of Mr. Hutchinson to be at half the expense of the re-survey of that part of the canal which Mr. Trumpbour had already gone over, which at the time of this offer amounted to about one hundred miles of the canal, and for that distance the lines were run out on both sides. This being refused by Mr. Trumpbour, it was deemed necessary to dismiss him, as appears by the letter of the Board of Canal Commissioners to the chairman of the committee on canals and internal improvements, adopted, or rather referred to, by the Canal Board as part of, or sustaining their report; (Assembly Doc. No. 188, pages 6 and 9, for 1832,) where it is said, "The memorialist, (Jacob Trumpbour,) has, with great assurance, condemned Mr. Hutchinson's plan of surveying and describing the canals. His plan, as well as Mr. Trumpbour's, was submitted to the consideration of the Canal Board in the winter of 1829 and '30, and although there was no distinct opinion expressed by the Board, it is believed that a majority of that body gave a preference to the plan adopted by Mr. Hutchinson."

"The Commissioners have been anxious for a long time to adjust this controversy, and have made every effort for that purpose"

which they thought consistent with the interest of the State, and the rights of the other parties. And Mr. Hutchinson, in the winter above mentioned, generously offered to be at one-half of the expense of a re-survey of the work done by Mr. Trumpbour, in order to produce uniformity ; but this has all been to no purpose ; the memorialist has been stubborn and unreasonable, and has been determined to force his services upon the State, and to do his work in his own way ; and even after the written notice from one of our number, given with our entire concurrence, that he must discontinue his labors upon the public works. For the services which he performed before this notice, he has received from Mr. Hutchinson \$500, including the amount of the note taken by Mr. Seymour, which Mr. Hutchinson now holds, and intends to apply in his settlement with Mr. Trumpbour. With what propriety he can ask compensation for services not required, but expressly forbidden, we leave to the opinion of the committee, and the decision of the Legislature."

The written notice above mentioned to have been given by one of the Commissioners to Jacob Trumpbour, requiring him to discontinue his labors on the public works, and which had the entire concurrence of the other Commissioners, the committee understand to be the following letter, written by Henry Seymour, in the month of May, 1830.

"JACOB TRUMBOUR, Esq.

"Your letter of the 20th inst. has been duly received. After having been so often informed that your difficulties with Mr. Hutchinson must be arranged before the Canal Commissioners would enter into any contract with yourself, I am not a little surprised that you should now announce your intention of recommencing the surveys of the canals without reference to those indispensable preliminary conditions. The Commissioners consider Mr. Hutchinson as the sole contractor for the survey of the canals, will hold him responsible for its due performance, and will pay him, and him only, for the expense of its completion. Your having failed to make such an agreement with Hutchinson as was contemplated and required, before the Commissioners could contract with you for any part of this work, you must consider yourself entirely unauthorised to enter upon the execution of it, and must abstain from any further proceeding in relation to it.

"Respectfully, your obedient serv't,

"HENRY SEYMOUR,

"In behalf of the Canal Commissioners.

How far the language of this letter could be legally addressed to Jacob Trumpbour, after he had been regularly contracted with and employed to survey the portion of the canals set off to him in the contract ; after he had been permitted to enter upon the execution of the work ; after the plan which he had adopted for the performance of the survey had been approved by the Surveyor-General, by the acting Canal Commissioner, superintending the works of the canal on the ground itself, at the time when Mr. Trumpbour was actually engaged in running out the boundary lines, and after the plan had been fully explained to Mr. Hutchinson and acquiesced in by him, is a question which the committee respectfully submit to the house ; but for themselves, they are unanimously and decidedly of the opinion, that that letter ought never to have been written under the circumstances of this case, as they stood at the time.

The agreement which it is alleged in the latter part of the preceding letter, Mr. Trumpbour had failed to make with Mr. Hutchinson, as was contemplated and required before the Commissioners could contract with him for any part of this work ; and for the not doing of which, he was required to consider himself entirely unauthorized to enter upon the execution of it, after he had done the greater part of the survey, was relative to the plan upon which the survey had been and was to be conducted. If he would have abandoned the survey of the boundaries, and adopted, in concurrence with Mr. Hutchinson's requisition, the survey of the tow-path, this letter would not have been written to him. The difficulties with Mr. Hutchinson, which it is said must be arranged, is the same question about the plan.

There is also a statement in the letter of the Canal Commissioners above cited, page 8, that "the two acting Commissioners, with a desire to gratify the memorialist, agreed to such a division, provided Mr. Hutchinson could be induced to relinquish a share of his contract, and would agree with Mr. Trumpbour upon a uniform plan of executing the work. It was with this understanding, and with the further condition that the maps should be made on a uniform plan, at Utica, under his immediate direction, that Mr. Hutchinson consented, on the request of the acting Commissioners, to allow Mr. Trumpbour to take one half of the contract."

In reference to the conditions above mentioned, the committee remark, that Mr. Hutchinson did agree to divide the contract with Jacob Trumpbour, the proof of which has been set out. In the next,

place, Mr. Hutchinson is required to agree with Jacob Trumpbour to a uniform plan of executing the survey. This the committee think Mr. Hutchinson did, when he acquiesced in the plan of survey disclosed and explained to him in August 1829, by Mr. Trumpbour, as stated in the deposition of William C. Trumpbour, above cited. The remaining condition, "that the maps should be made on a uniform plan, at Utica, under his immediate direction, that Mr. Hutchinson consented, on the request of the acting Commissioners, to allow Mr. Trumpbour to take one half of the contract."

The committee think that Mr. Trumpbour is to be considered as having actually conformed to the two first of these conditions; and as to the third, he has been prevented from accomplishing it by the obstacles which have been cast in his way, for the purpose of compelling him to change the plan of his survey; so that his maps have not yet been made, and he therefore is not to be considered as in default in this case. It is understood that he did agree to make his maps at Utica; but Mr. Hutchinson has directed his maps to be made at Middletown in the State of Connecticut. The map of the Champlain canal, made by or under the superintendence of Mr. Hutchinson, was made at Middletown, and not at Utica; so that, in the opinion of the committee, there is no reason to set up these points against Mr. Trumpbour, nor indeed any of them.

It has also been urged that Mr. Trumpbour ought to have given security, and to have made a written contract. There is no evidence that Mr. Hutchinson was required to enter into any other contract than that which has been before set out. It does not appear that either he or Mr. Trumpbour, in making the original contract, was required to give any security, or to enter into any more formal contract than is herein before specified and proved to have been entered into: And the committee are constrained to believe, that the requirement of a written contract, and the giving of security, would never have been made a question, if difficulties had not subsequently arisen about the plan of surveying the canals; and that these points became questions only after Mr. Hutchinson had thought of a different plan for the survey, from that upon which Mr. Trumpbour, with the approbation of the Surveyor-General, the acting Canal Commissioner on the ground, and finally of Mr. Hutchinson himself, had previously began his survey.

The committee think that these facts sufficiently appear in the depositions; and that the deposition of Holmes Hutchinson, No. 30,

taken in connection with the memorandums mentioned in it, shews on what ground the offer of Mr. Hutchinson to be at half of the expense of making the re-survey, was made.

The contract about which so much has been said with regard to the means of enabling Mr. Trumbour to obtain, after he had performed a hundred miles of the survey under his contract already made, seems to be a contract for re-surveying, on the tow-path plan, that part of the canal which he had previously surveyed on the actual boundaries ; and which he refused, notwithstanding the offer of two hundred dollars made by Mr. Hutchinson, as appears by the deposition last cited, and the memorandum X. therein mentioned.

With respect to the permanency of the inner edge of the towing path, and its fitness to serve as an immutable monument by which to correct the variation of the magnetic needle, as has been gravely urged against Mr. Trumbour's plan of survey, and against the stability of all monuments not connected with the canals, the following passage is from the deposition of Col. Bouck, one of the acting Canal Commissioners :

“ 28 Q. Is the inner edge of the towing path a more permanent line than the division line between the public and private lands along the canal ?

“ A. The bounds between public and private lands along the canals are ascertained, as I suppose, by measuring from the base line, and are only liable to the same variation that may occur to the base line. When the tow-path is washed or wasted, we repair on the inner edge, so as to preserve the original shape.

“ 31 Q. What circumstances do you allude to ?

“ A. The variation or correctness of the compass might be ascertained by the inner edge of the towing path, when that was found to retain its original shape and position.”

The following extract is from the deposition of Walter Osborn, a witness sworn on the part of Jacob Trumbour :

2 Q. Have you had opportunity and occasion to notice the variations of the inner edge of the towing-path, from time to time ; and have you noticed any such variations ? State particularly.

A. I have had occasion to notice the towing-path particularly, and the variation of it near Buffalo is very great: or rather being sand, it is washed all away pretty much; so that they have in one place moved it back the whole width of it, for a distance of thirty or forty rods at that point. Also on the Tonawanda creek, the tow-path is varied and very much washed in places, not being walled or timbered. When the creek rises it soaks the banks, and in many places they are washed away half the width of the towing-path. Also along the Niagara river, not being walled or timbered, it is varied considerably, the banks being washed away. From Black Rock lock to Pendleton, for the distance of twenty miles, there is not to exceed a hundred rods of the banks secured by any wall or covering. The towing-path of this part of the canal is most liable to variation. See his deposition, No. 20. He was not acquainted with the whole line of the canal; and it appears by his statement that in some places the towing path is timbered up to protect it from injury.

In relation to repairs and the preservation of the towing-path in its original position, he stated, in answer to the third question:

“Have the repairs of the towing-path, so far as you have observed, in all cases restored its inner edge to its original shape and position? State particularly your knowledge upon that subject.

A. In timbering the face of the banks, I have been instructed by Mr. Bouck, the Canal Commissioner, to place it as near to the bank as it then stood, as could be well done, to avoid the expense of bringing earth to fill it up as it originally was, which I did.

4 Q. Is the angle of the inner edge of the towing-path generally preserved, or is it worn off by the treading of men and beasts, by rains, and by the wearing of the towing lines, or other causes? State its situation as particularly as in your power.

A. It has worn off, particularly at those places where it has not been walled or timbered.

Here then we see, that if the admission of Col. Bouck, that if the plan of surveying the tow-path renders the boundaries between the public and private property subject to the same variation that the inner edge of the towing-path is liable to be correct, then the bounds of the public and private property along the lines of the canals for a thousand miles, with all their buildings, fences and improvements, would be liable to be rolled backward and forward to keep course

and distance with the inner edge of the towing-path, as it may happen to be varied by the lesions of time, the abrasions of usage, the washings and wastings of floods, or shifted by the casual alluvions which so naturally and frequently occur. Whereas, if the bounds were once fixed upon the plan prescribed by the statute, they would be as immoveable as the bounds of the State itself.

The committee cannot say but that Col. Bouck's opinion above referred to, may be correct, as it regards the variations of the base line ; for as no means of accurately locating this line is given but at the locks, which in several instances are at great distances from each other, and in the case of the long level is understood to be sixty-nine miles, the intervening distance must be run or re-surveyed by the compass, and consequently the variation of the magnetic needle will be as much felt in running that line as any other. How, then, can a boundary question be settled under such circumstances without a new survey ?

It is supposed to be important to explain the transaction respecting the promissory note and receipt which Mr. Seymour took of Mr. Trumpbour when he paid him the two several sums of \$250, amounting to five hundred dollars, which receipt, and promissory note, Mr. Seymour afterwards endorsed over to Mr. Hutchinson ; as this tends to cast an appearance upon the transaction as if Mr. Trumpbour was subordinate to Mr. Hutchinson. Upon examination, however, this circumstance seems to be sufficiently counter-vailed and answered ; and the reason for this course of conduct towards Mr. Trumpbour, is elucidated and shewn to have arisen from the circumstantial and material difference between him and Mr. Hutchinson, about the plans on which Mr. Trumpbour was surveying, and Mr. Hutchinson was about adopting for his survey. The following extract from the above mentioned letter from the Board of Canal Commissioners to the chairman of the committee on canals and internal improvements, documents of the Assembly of 1832, No. 188, page 8, is deemed important in aiding us to understand the nature of the questions raised by Mr. Hutchinson.

“The present difficulty with the memorialist, (Mr. Trumpbour,) has arisen from a disagreement between him and the former gentleman. After Mr. Trumpbour's second proposition had been rejected, he was desirous that the survey should be divided, and that he should be permitted to take one half of it without the consent of Mr.



Hutchinson. This proposition was unanimously rejected as unjust, as the contract had been given to Mr. Hutchinson ; but the two acting Commissioners, with a desire to gratify the memorialist, agreed to such a division, provided Mr. Hutchinson could be induced to relinquish a share of his contract, and would agree with Mr. Trumpbour upon a uniform plan of executing the work. It was with this understanding, and with the further condition that the maps should be made on a uniform plan at Utica, under his immediate direction, that Mr. Hutchinson consented, on the request of the acting Commissioners, to allow Mr. Trumpbour to take one half of the contract. And although Mr. Seymour's letter of introduction by Mr. Hutchinson, which the memorialist has embraced in his communication, does not in terms express these conditions, yet it was well known to Mr. Trumpbour, as well as to Mr. Hutchinson, that the Canal Commissioners would never ratify any agreement between them, without security being first had that they should adopt and pursue a uniform plan of making their surveys, maps and descriptions. Mr. Hutchinson says that at the time he agreed with Mr. Trumpbour to divide the survey, these conditions were fully discussed, understood and agreed upon. But the memorialist, after he had received the paper signed by himself and Mr. Hutchinson, which indicated only the division of the work and the compensation to each party, appears to have supposed himself exonerated from the conditions above referred to ; and Mr. Seymour had early intimations, that in making his surveys and descriptions he was not conforming to any plan adopted with Mr. Hutchinson, and that difficulty was to be apprehended on this account. And it was for this cause, that Mr. Seymour declined paying him any money, except such as he took a promissory note for, or to execute any contract with him until the business was better understood. He did not think it proper to recognize Mr. Trumpbour as a contractor, or to exonerate Mr. Hutchinson from his obligation to perform the whole survey, until every apprehended difficulty was removed "

'The committee think that the allegations contained in the former part of the foregoing paragraph, have been already answered. They wish to draw the attention of the House to the remark, that "Mr. Seymour had early intimations that in making his surveys and descriptions, he (Mr. Trumpbour,) was not conforming to any plan adopted with Mr. Hutchinson, and that difficulty was to be apprehended on this account."



**"And it was for this cause that Mr. Seymour declined paying him any money, except such as he took a promissory note for, or to execute any contract with him until the business was better understood."**

This extract explains the grounds out of which the controversy rose after Mr. Trumpbour had commenced his survey upon a plan which had received the approbation of all parties, and the courses which were adopted to induce him to change that plan, or be ejected from the contract. He chose to stand the hazard, and we see the result.

The following extract from Mr. Hutchinson's memorial (see the document last cited, page 12) is also connected with the same subject, and tends further to elucidate the transaction.

**"Subsequently to this, your memorialist, from a desire to preserve that uniformity in the surveys which was deemed from the first of so much importance, and likewise, to avoid all misunderstanding, and enable Mr. Trumpbour to obtain his contract and complete his proportion of the surveys, gratuitously offered to be at one half of the expense of an admeasurement of that portion of the canal, amounting to about one hundred miles, which Mr. Trumpbour had then surveyed after a plan of his own choosing, and which had been found upon examination, to be entirely different in principle, and greatly inferior in every respect, to that which your memorialist had, with the sanction of the Canal Commissioners, adopted.**

**"Notwithstanding, however, this very liberal offer on the part of your memorialist, (to which Mr. Trumpbour at first assented) and the repeated express prohibition of the Canal Commissioners, the said Trumpbour most unwarrantably persisted in completing the surveys of his part of the canal upon the same objectionable plan which he had from the first adopted, and is now endeavoring, by his appeals to your honorable body, and by various exceptionable means, to force the same upon the people of the State of New-York.**

**"For the purpose of more effectually accomplishing his object, the said Trumpbour in his memorial already alluded to, has incorrectly stated that your memorialist had departed from the plan of survey originally discussed and agreed upon between them, and either from a want of candor, or competency to judge, has stated to your honorable body, that 'the surveys and field notes made under the direction of your memorialist will not attain the object for which the survey was directed.'"**

The following extract is from the same document, pages 17 and 18, and connected with this subject, from the memorial of Jacob Trumbour, where he says:

"In October, following, at a meeting of the Board of Canal Commissioners held at Utica, Mr. Henry Seymour was authorised and instructed by the Board, to make written contracts, and advance the money requisite to the survey of the canals. On the breaking up of the Board, for the purpose of proceeding to the examination of the route of the proposed Chenango canal, your memorialist requested Mr. Seymour to make him an additional advance of money on account of the canal survey in which he was employed. Mr. Seymour being unwell, and also in haste, instructed Mr. Hutchinson to procure your memorialist an additional advance of \$250, which he did, for and in behalf of the Canal Commissioners, as will appear by the receipt he gave at the time for that sum.

"In November, your memorialist wrote to Mr. Hutchinson to call on Mr. Seymour, for a further advance of money for him, which he wished forwarded to Port-Byron, for the payment of his hands, as he was then about closing his survey for the season; the copy of which letter has been misplaced. In reply Mr. Hutchinson wrote the following:

*"Utica, November 29, 1829.*

DEAR SIR,

I arrived last evening from New-York, and found your letter on the subject of funds. I can only say that Mr. Seymour expects that the contract will be executed, and security given for the performance of the survey; and further, that he holds me responsible for the whole work. I shall be for the next fortnight in this village, and shall expect to see you shortly on your return.

Respectfully yours,

HOLMES HUTCHINSON."

"JACOB TRUMBOUR, Esq."

The following extract from the document last cited, pages 24 and 25, is also connected with this part of the controversy, and is from the memorial of Jacob Trumbour:

"Your memorialist further states that since the last session he received from the said Holmes Hutchinson the following letter:

*"Horse Heads, Tioga Co. Dec. 4, 1831.*

JACOB TRUMBOUR, Esq.

Dear Sir—In September last I was directed by the Canal Commissioners to proceed and finish the survey of the canals, agreeable to my engagement with the State. In consequence, however, of the lateness of the season, and being occupied with other business, I have been unable to go on with the work as intended. My object in writing this letter is to ascertain from you whether you intend, or have a wish to fulfil your engagement with me, by making the survey and maps of the western part of the Erie and the Oswego and Cayuga and Seneca canals.

You must be aware that this business has been delayed by you unnecessarily, and that I hold your obligations for cash lent.

Should you wish to go on and finish the survey and maps, you must first execute a contract, with security that will be acceptable to the Canal Commissioners, to complete the survey and maps in accordance with our previous understanding, to conform to my survey, and the maps to be made at Utica on the same scale and style of finish.

I shall be happy to hear from you on the subject, addressed to me at Utica; and should you wish to see me, I intend being in Albany in January, and will meet you there at any time you may designate. I hope you will favor me with an early answer to this letter, for should your previous survey not be made to conform to mine, and to meet the views of the Canal Board, and should you yet decline to fulfil your engagement, I shall make arrangements to perform my contract with the State as early as the weather will permit in the spring.

Sincerely yours,

HOLMES HUTCHINSON."

These several passages are further elucidated by subsequent events and transactions. Notwithstanding the ground assumed by the Commissioners and Mr. Hutchinson in these several extracts, on the 22d day of May, 1832, when both the memorialists had been engaged for a month and upwards, in laying their respective proofs before the committee; and as they had eminent counsel on both sides, they are presumed to have been fully advised of their respective rights, Mr. Hutchinson, on the closing of the examination of the witnesses, though there were several depositions which had been taken, that were not then engrossed for signature, filed with

the committee the following paper, signed by his counsel, that is to say :

*To Judah Hammond, Esq. Chairman of the committee appointed to investigate a claim presented to the House of Assembly by Jacob Trumpbour, Esq.*

ALBANY, May 22d, 1832.

GENTLEMEN—

We, as counsel for Holmes Hutchinson, beg leave to state, that we have appeared before the committee with the sole view of protecting his character as an individual, and his reputation as a surveyor, from unjust aspersions sought to be cast upon him by the memorial of Jacob Trumpbour. So far as the claim of Jacob Trumpbour is to be considered as independent of the transactions between Mr. Trumpbour and Mr. Hutchinson, we wish it to be distinctly understood, that our client disclaims any interference with it. Believing from the testimony, that the object which induced our client to request us to appear before the committee in his behalf, has been fully attained, we decline submitting any argument upon the question, whether or not the Legislature ought to grant the prayer of Mr. Trumpbour's memorial.

We are respectfully,

Your obedient servants,

EDWARD LIVINGSTON,  
S. CHEEVER.

In Committee, 22d May, 1832. }  
On the closing the testimony. }  
Present—*The Committee.*

This paper, filed on the 22d day of May, 1832, conveyed to the committee the first notice which they received of the fact, that Mr. Hutchinson did not claim the entire contract. Such a declaration on the part of Mr. Hutchinson, after the course which he had taken, and the claims which had been made, was as much unexpected by the committee, as it must be unlooked for by the House ; not but that the committee had seen sufficient reason in the facts which had been proved to conduct them to a conclusion which this paper is well calculated to fortify.

The counsel of Jacob Trumpbour, submitted the following statement :

The following points, which are deemed to arise from the facts developed before the committee appointed to investigate the memo-

rials of Jacob Trumpbour and Holmes Hutchinson, are respectfully submitted, on behalf of Mr. Trumpbour :

1. That Judge Trumpbour was employed under the act of 1827, by the authorised agents of the State, to make a survey of the Cayuga and Seneca and Oswego canals, and that part of the Erie canal west of Canastota, in April 1829, with a full knowledge on the part of those agents of the plan of survey contemplated by him.

2. That his plan was submitted to, and received the approbation, of the Surveyor-General, one of the members of the Canal Board, and the officer of the government most conversant with, and deemed to be best qualified to judge of the subject ; and that it was also explained to, and received the assent of the acting Canal Commissioner, having more particular charge of the matter.

3. That he commenced and proceeded to the performance of his contract for the survey, according to the requisitions of the statute, with all due diligence, care and ability, with the knowledge and assent of the Canal Commissioners ; and having bestowed his own services, and procured that of others, in the most perfect good faith, he is upon every principle of equity and justice, entitled to compensation for those services, as well as for all reasonable and proper expenditures incurred in the performance of the work ; and more especially, as it never has been pretended that the plan or execution of his survey was defective, or that it would not answer the requirements of the statute.

4. Having, under these circumstances, progressed in the performance of his contract, until rising of one hundred miles of the survey was completed, and thereby sustained heavy expenses, and suffered a very detrimental derangement of his ordinary and lucrative business, the Canal Commissioners had neither the legal or equitable right to rescind the contract without his consent ; and hence he was neither legally or equitably bound to regard the express or implied prohibition in the letter of Mr. Seymour, of May 1830. And this more particularly, as from the proofs taken, it is clear that Mr. Trumpbour could not be considered as a sub-contractor to Mr. Hutchinson, or in any way bound to submit to his direction, or conform to his wishes, further than might be required by a regard to the public interest.

5. Had the survey of these canals been completed by the necessary returns of field books and maps, which would undoubtedly have been done but for the interference of the acting Canal Commissioner, and which (proceeding from what motive it may) was injurious and unjust as it regarded Mr. Trumpbour, he would have been justly and legally entitled to the stipulated compensation, and a reasonable additional allowance for such extra service and expense as arose from the want of the facilities he had a right to expect at the time of his contract, upon the supposition that the act of 1817, relative to a description of the lands taken for the canals, had been complied with; and that without reference to the merits of his survey as compared with any other plan; his having been performed under the implied and *express* sanction of the public agents.

6. But it is most respectfully and earnestly insisted that the plan pursued by Mr. Trumpbour is far preferable and more conducive to the public interest than that adopted by Mr. Hutchinson. The former alone fulfils the manifest objects of the Legislature in directing the survey; that of ascertaining and fixing the boundaries and location of lands taken for the use of the canals, so as to prescribe to the public and to individuals the extent of the property of each. The latter contains the mere elements of a survey, sufficient barely for the purpose of making a general delineation of the canals upon a map, and perhaps furnishing the means to persons of professional skill of ascertaining the extent and boundaries of the State property, but presenting no actual location, nor giving any practical survey.

7. That Mr. Trumpbour could have been actuated by no other motive in adopting and adhering to his plan, than a regard to the public interest, and a wish fully and fairly to answer the requirements of the statute, is perfectly obvious from the fact, that the execution of it, requires much more care, practical skill, labor and expense, than that of Mr. Hutchinson.

8. If uniformity of plan in the survey is indispensably requisite as it regards the public interest, (and the propriety of it will not be denied on the part of Mr. Trumpbour,) it is further submitted, that it ought to have been attained by a conformity to the survey of Mr. Trumpbour.

1. Because that survey is best, and it is believed the only one, calculated to fulfil the requirements of the act.

2. Because it was commenced and prosecuted to a very considerable extent, and that to the full knowledge and understanding of Mr. Hutchinson before his survey was commenced, or the plan devised.

3. Because with such knowledge on the part of Mr. Hutchinson, it is difficult to perceive any motive for the adoption of his plan, except to save labor and expense, and render the job profitable to himself and his sub-contractor, Mr. Johnson.

9. It is contended that Mr. Hutchinson's having been an engineer on the canal could be no just reason for giving him preference in making a survey of its lands, over a surveyor of long practical experience and established reputation. But if the reason had been sound, it is humbly conceived that it must have entirely failed from the act of Mr. Hutchinson, in employing a person to make the survey, of very limited experience, either as a surveyor or engineer.

10. If the foregoing views are correct, and they are presented with confidence, then Mr. Trumbour, in order to save himself from loss, having been driven to incur great trouble and expense in presenting his claim for services rendered the State in the most perfect good faith, and with a zeal for usefulness and fidelity, in the way of which unnecessary obstacles have been thrown; he ought upon plain principles of legal and moral justice to receive at the hands of the Legislature a full and fair indemnity for his time expended and expenses incurred.

11. It is also most respectfully suggested as proper for the consideration of the Legislature, that the facts disclosed in this investigation show the necessity of further legislation touching the title of the state to a great proportion of the lands appropriated to the use of the canals.

A. L. JORDON,  
J. L. VIELE.

May 24th, 1832.

Under these circumstances, the committee supposed the examination of witnesses might be considered as closed; but on the 22d day of June instant, the following resolution was passed by the House of Assembly, on the Application of Mr. Hutchinson:



**Resolved,** That the committee appointed upon the petition of Jacob Trumpbour, be authorised during this day or to-morrow to hear such testimony as may be produced before them.

Under the authority of this resolution, Mr. Hutchinson offered himself as a witness. The following facts from his deposition are among others therein sworn to. (See No. 30 of depositions.)

1 Q. Have you a memorandum of an agreement between yourself and Judge Trumpbour? if so, produce it.

A. I have, and now produce it.

It is marked Exhibit X, 22nd June, 1832, and is as follows:

**EXHIBIT X.—22d June, 1832.**

“It is agreed between Jacob Trumpbour and Holmes Hutchinson that the maps of the survey for the Erie canal and the Champlain, Oswego, and Cayuga and Seneca canals, shall be made at Utica from the rough maps first to be plotted from the survey; it is agreed that they shall be made on a scale of chains to the inch, and on the best of super-royal drawing paper, and that the style of finish and completion shall conform to a map made by E. F. Johnson, of part of the village of Whitesborough, as far as the different surveys made by them will admit; and that the whole shall be prepared to be bound in atlas form. And Jacob Trumpbour agrees that the persons who shall be employed by Mr. Hutchinson to make the fair maps shall be employed to complete the fair maps of the lines surveyed by the said Trumpbour, and it is agreed that the price shall not exceed \$3.50 per day while employed. This agreement is understood to be for the purpose of having a perfect uniformity in the whole maps as it respects size, paper, appearance and the general topography and finish, &c.

“And it is further agreed, that the field-notes shall be written out from the survey in a book to be prepared for that purpose. The field-book shall be made of ruled paper, and written in a good fair hand, and this book shall have lines drawn across and near the top, representing the canal and all the important monuments and lines that cross the same, with spaces to put down the offset between the inner edge of the tow-path or water-line and the outward boundary of the tow-path side of the canal. This sketch is intended for the purpose of illustrating the field-notes of the survey, and the whole



shall be made to correspond as near as the different methods of doing the work will admit of.

“And it is further agreed, that Henry Seymour, Esq., Canal Commissioner, with whom contracts are to be made to make those surveys and maps as contemplated by the Revised Laws, shall have the power, and he is hereby authorised to settle any question of difference that may arise between the parties, in the fulfilment of this agreement, and his opinion to be final and conclusive ; and he is authorised to retain such sums of money from the amount to be received for this work, as may enable him to compel or carry into effect the intention of the parties.”

**2 Q.** When and where was that memorandum written ?

**A.** It was written in Albany, in a room occupied by Judge Trumbour, at the Columbian Inn, in or about the last of January, or beginning of February, in the year eighteen hundred and thirty, and soon after the informal meeting of the Canal Board, referred to in my former deposition.

**3 Q.** Is the body of that memorandum in your hand writing, and is any of the interlineations in the same in the hand writing of Judge Trumbour ; and if so, point them out ?

**A.** The body of it is in my hand writing ; some of the interlineations are in the hand writing of Judge Trumbour. The following words were written by him, to wit : “as far as the different surveys will admit.” 2d. “to make the fair map.” 3dly. “the fair map.” These passages are interlined in the fore part of the instrument.

**5 Q.** Does this memorandum conform to the agreement you made with Judge Trumbour at Kingston, as you understood it ?

**A.** It does in part ; it goes more into particulars, and has some modifications which were made for the purpose of enabling Judge Trumbour to procure his contract of the Canal Commissioners for the said survey.

**6 Q.** Was this memorandum made at the request of the Canal Commissioners, or either of them ?

A. The acting Canal Commissioners requested Judge Trumbour and myself to arrange our surveys so that they would be willing to execute the contracts, or a contract, with Judge Trumbour.

7 Q. Why was not this memorandum of an agreement signed by Judge Trumbour?

A. The Canal Commissioners requested that an agreement should be made to re-survey that part of the Erie canal which Judge Trumbour had surveyed, to produce uniformity in the surveys and maps. I supposed that that paper contained our exact understanding; it was intended to be engrossed and signed; it was the agreement between us. The request of the Canal Commissioners alluded to in the beginning of this answer was made subsequent to the writing of the above memorandum of an agreement.

8 Q. Have you any other memorandum of Judge Trumbour in relation to the said surveys; if so, produce it?

A. I have, and now here produce it, marked Exhibit Z., read in committee, June 23, 1832.

*Memorandum of Agreement between Hutchinson and Trumbour.*

1st. Hutchinson agrees to allow Trumbour \$200, to conform his survey of the Erie canal to his; and in addition, to add to his part of the survey of the eastern part of the canal to Syracuse, which shall be the division between them.

Surveying 85 miles Erie canal, .....	\$600 00
123 miles Cayuga and Seneca, and Oswego and Cham- plain canal, .....	1,230 00
Allow for 10 miles difference,.....	200 00
	<hr/>
	\$2,030 00
123 miles of canal, Cayuga and Seneca, Oswego and Champlain canals, in proportion,.....	1,110 00
Half the cost of surveying 85 miles of canal, at \$5, .....	222 00
	<hr/>
	\$1,332 00

9 Q. In whose hand-writing is this second memorandum?

A. The first page is in the hand-writing of Judge Trumbour; the residue of the writing is in my hand.

10 Q. When and where was that memorandum written?

A. I think in Judge Trumbour's room, a day or two after the foregoing memorandum, herein first mentioned, was written.

11 Q. Did you at any time, and when, agree with Judge Trumbour as to a re-survey of that part of the Erie canal that had been surveyed by him, so as to make it conform to your survey?

A. We did make such an agreement, at or about the time of writing the last memorandum marked Z; the said memorandum being an offer, and not an agreement.

12 Q. What was the substance of the agreement spoken of in your last answer, and why was it not reduced to writing?

A. The substance was, that I was to re-measure one half of the line surveyed by Judge Trumbour. This agreement or offer on my part was stated to Col. Bouck, which he understood, and recapitulated to us. At that time, I supposed it would be reduced to writing. Judge Trumbour, however, after we had been in Col. Bouck's room some time, stated, as I recollect, as follows: That he should have to re-survey the line that he had once surveyed, and it would be inquired of him why he did so; that he did not know what answer to make to such inquiry, and that he would not agree to it; and he took his hat and left the room.

13 Q. What were the inducements which prompted you to make that offer?

A. It was done to enable Judge Trumbour to get his contract with the Canal Commissioners, and to produce an entire uniformity.

14 Q. At the informal meeting of the Canal Board, did you understand the Surveyor-General to express an opinion that a full description of the survey ought to be given in writing, in the returns to be made with the maps?

A. I understood him as suggesting that an additional copy of the field-notes should be added to my field-book.

35 Q. If that memorandum was understood to be the agreement between you, and difficulties had already arisen in relation to the agreement made at Kingston, why was it not signed by the parties?

A. There was a subsequent difficulty rose, as I have already related; it was not signed, because it was not engrossed. I supposed it would be engrossed and signed; before that was done a difficulty rose about the re-survey, which prevented the signing of it. The second agreement, offer or paper, marked Z, was intended to modify or alter the original agreement, only as to the re-survey.

36 Q. Was Judge Trumbour ever requested to sign the memorandum marked X, or an engrossed copy of it?

A. I think he was not.

37 Q. Was any copy of it ever made for signature?

A. I think not.

39 Q. Was the arrangement you have spoken of, for re-surveying the line of the canal which had been surveyed by Judge Trumbour, intended to supersede or vary any part of the agreement, as purporting to be contained in memorandum X?

A. It would some part of it. It was so intended.

Mr. Hutchinson submitted the following paper as a copy of the memorandum Z.

*Monday, June 25, 1832.*

H. Hutchinson gives the following statement:

"J. Trumbour's offer, in paper marked Z, is as I recollect,

H. Hutchinson to allow J. Trumbour .....	\$200 00
to conform his survey to Hutchinson's, and in addition,	
to extend the line from Canastota to Syracuse, which	
shall be the division between them.	

From Canastota to Syracuse is 25 miles, which added to the	
former line of H. Hutchinson, at the rate of the proposi-	
tion to the Canal Commissioners, about \$10 per mile, is	\$250 00
	<hr/> \$450 00 <hr/>

"Terms agreed on, as stated in presence of Col. Bouck, Canal Commissioner: H. Hutchinson to re-measure one half of the 85 miles of the Erie canal, previously surveyed by Trumbour, from Canton to Rochester, which is considered worth about the half of the cost of the survey, that is 42½ miles, at \$5 per mile,..... \$222 50

## IN COMMITTEE—23d June, 1832.

*Present*—Mr. HAMMOND,  
Mr. McDONALD,  
Mr. HOGEBOM,

The memorialists and their counsel.

. Jacob Trumbour sworn as a witness.

1 Q. Was the memorandum marked X prepared in your room, and was the same ever assented to by you as an agreement between you and Mr. Hutchinson?

A. The paper marked X was presented to me in my room by Mr. Hutchinson, in the winter of 1830, after the informal meeting of the Canal Board. He told me he had prepared and written it, except the few interlineations in my hand-writing. It was handed to me for consideration. I never did, directly nor indirectly, assent to this agreement. Upon examining it, I made a few interlineations, but before I got through I stopped and laid it down, and would have nothing to do with it, and so informed Mr. Hutchinson at that time or shortly afterwards, and gave him my reasons for it.

2 Q. What were those reasons?

A. After the informal meeting and the report of the Surveyor-General, Mr. Hutchinson was very anxious that some plan should be adopted to reconcile or produce a uniformity of the maps or returns of the survey, upon which he produced this memorandum X. My objections to it were, that the manner as herein set forth, although it might have the appearance of uniformity, yet the surveys would be different, and it would necessarily be detected if properly examined, and as I was opposed to his survey, I would not lend myself to the attempt to make such a return. Another reason was the difficulty of giving such a description of Mr. Hutchinson's part of the survey as to make it any way conformable to mine; and besides, another principal reason was, that I did not choose to put myself in the power of Henry Seymour as arbitrator.

3 Q. Did Mr. Hutchinson say any thing about Mr. Seymour's approbation of the terms of that agreement? And if so, what?

A. At the time that he handed me exhibit X, I think he mentioned that he had seen Mr. Seymour, and had obtained his approbation, or he had assented to become arbitrator; or some such thing.

4 Q. Did you make any agreement with Mr. Hutchinson for a re-survey of the part of the canal you had surveyed, upon his or any other plan?

A. I never did.

5 Q. Was memorandum Z ever submitted by you to Mr. Hutchinson as an offer for an agreement?

A. It never was. It is a memorandum of my own, which I made of his verbal proposition, and the middle part of the first page has reference to a different subject. As to the other memorandums which appear upon the last page in the hand-writing of Mr. Hutchinson, I have no recollection of ever having seen before. How the paper came in his possession I have no knowledge. It was upon my table.

JACOB TRUMBOUR.

Taken and sworn, the }  
23d of June, 1832. }  
J. HAMMOND, *Ch'n*.

The committee are of opinion that these several extracts, and the memorandums X and Z, together with the affidavits, sufficiently show that the controversy with Mr. Trumbour was entirely about the plan of his survey, and that the often repeated remark about the execution of written contracts, giving security, and getting his contract from the Canal Commissioners, must all be taken as referring to the attempt to induce him to enter into a contract to conform his survey to Mr. Hutchinson's, after Mr. Hutchinson had conceived the project of adopting the plan of surveying the towing-path: the committee having been wholly unable to trace it up to any other source. In the correctness of this conclusion, however, the committee had no doubt from the course of the preceding testimony.

Mr. Trumbour has made the survey of his part of the canals, the field notes and rough maps; what remains to be done on his part is to make his fair maps or atlas, field books and returns; the expense of which is about equal to the expense of what he has already done; so that the labor of his contract is about one half performed.

The committee are of the opinion that he ought to be permitted to finish his contract, and to receive the compensation stipulated therein; and that all the expenses of these proceedings should be paid out of the Canal Fund.

After having thus attempted the discharge of an arduous duty imposed on your committee, they feel that it only remains for them to present to the consideration of the House the following resolutions:

*Resolved*, That it was the design of the Legislature in passing the act 1 Rev. Stat. pages 217 and 218, that there should be an actual survey of the boundaries of the public lands along the lines of the canals, designated by the usual monuments on the ground.

*Resolved*, That Jacob Trumpbour be permitted to finish his surveys and maps, according to his undertaking, and for the stipulated compensation.

*Resolved*, That under the peculiar circumstances of this case, Jacob Trumpbour is entitled to be reimbursed such sums as he has necessarily expended by reason of the interruption he has suffered in the performance of his contract, and that the same be paid out of the Canal Fund.

*Resolved*, That it be referred to the Attorney-General to examine and report to the next Legislature whether any and what further legislative action is requisite to protect the titles and secure the public property constituting the canals of the State.

All which is humbly submitted.

J. HAMMOND,  
TOBIAS L. HOGEBROOM.  
JOHN McDONALD.





**No. 335.**

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**IN ASSEMBLY,**

**June 27, 1832.**

**[SECOND MEETING.]**

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**DOCUMENTS**

**Accompanying the report of the select committee to which was referred the memorial of Jacob Trumbour and Holmes Hutchinson.**

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**EXHIBIT I.**

*In Committee, 3d May, 1832, on the part of Jacob Trumbour.*

A field book of that part of the Erie canal, between *Buffalo* and *Canastota*, and of all the lands belonging to the State adjacent thereto, or connected therewith, as particularly delineated in an atlas accompanying the same, containing a complete map of the whole.

Each page in said atlas contains a section of said map, on which are designated, (by courses and distances, and by permanent objects with their relative bearings and distances from the several stations,) the out-bounds of every parcel of such lands, the names of the former owners, and the date of every title to the State.

Each page of the field book is numbered, and contains a written description with explanations and remarks of the out-bounds of the State lands on both sides of the canal, delineated on each page of the atlas of corresponding number.

Done in conformity to the Revised Statutes, chapter 9, title 9, article 1, of the first part.

Performed in 1829 and 1830,  
Per JACOB TRUMBOUR.

**NOTE.**—The measures of my offsets at each station on both sides of the canals to the waters edge, are at right angles to the line last run.

**Courses and distances of the northerly bounds of that part of the Erie canal, (see map in atlas, page 1.)**

***In the town of Buffalo, county of Erie.***

Beginning on the northerly side of the Buffalo creek, bearing S.  $61^{\circ} 30'$  W. 40 links from the southwest corner of Charles Townsend and George Coit's store, and N.  $43^{\circ} 30'$  W. 18 links from the corner of the dock, and runs thence :

1. N.  $50^{\circ}$  E. 1 chain 72 links, to station 2, distant 12 feet from the canal or basin, including 7 feet 2 inches on the west, and 8 feet on the east side of Townsend & Coit's 1st store, within the bounds of the canal.
  2. N.  $55^{\circ} 15'$  E. 95 links S. 3, distant 12 feet from the canal or basin, including 8 feet 6 inches of Townsend & Coit's 3d store, within the bounds of the canal.
  3. N.  $43^{\circ} 30'$  E. 6, 85, S. 4, distant 12 feet from the canal or basin, and 15 feet from the canal, bearing S.  $36^{\circ}$  E. 1 chain, from the northeast corner of D. & W. W. Smith's factory, and also bearing N. 83, W. 1 63 from the southwest corner of the National Hotel, station 2, on the opposite side of the canal, including 1 foot 10 inches on the westerly side, and 4 feet on the easterly side of Townsend & Coit's store-house, within the bounds of the canal.
- At 1 chain 05 links southwest corner of Abraham Lazeler and James Swany's buildings.
- At 3 chains 06 links easterly side of said buildings, including 3 feet 8 inches at the easterly end of said buildings, within the bounds of the canal.

**Courses and distances of the southerly bounds of that part of the Erie canal, (see map in atlas, page 1.)**

***In the town of Buffalo, county of Erie.***

Beginning on the northerly side of the Buffalo creek, bearing S.  $23^{\circ} 30'$  E. 1 chain 49 links from station 1, place beginning on the northerly side of the canal or basin, and also bearing S.  $53^{\circ}$  W 61 links from the southwest corner of George B. Webster's store, and runs thence :

- N.  $61^{\circ}$  E. 1, 81, distant 12 feet from the canal or basin, including 7 feet on the south and 5 feet on the north of said Webster's store-house, within the bounds of the canal.
- N. 43, 30, E. 7, 47, distant 12 feet from the canal or basin, including 4 feet 8 inches on the south, and 10 inches on the north of Jerry Radcliff's store-house, and also including 4 feet of Miles Jones' Shoe shop, within the bounds of the canal.
- N. 83, E. 22 links, distant 12 feet from the canal or basin.
- S. 50, E. 4, 92, to the Bridge across Little Buffalo creek, in Main-street, distant 12 feet from the canal or basin, bearing S.  $40^{\circ}$  E. 62 links from the northeast corner of G. L. Simcoe's grocery, in-

cluding 7 feet of the northeast course of said Simcoe's grocery, within the bounds of the canal.

At 4 chains 37 links Main-street and easterly bounds of Prime, Ward and Sands' course of their line, N. 15, E. 12 feet, canal or basin.

N. 15, 45, E. 1 chain 28 links across Little Buffalo creek to station 1, distant 12 feet from the canal or basin, bearing S. 77, W. 1 chain 14 links from the westerly corner of Jackson's Hotel.

1. N. 44, W. 4, 73, station 2, southwest corner of the National Hotel, distant 12 feet from the canal or basin, bearing S. 83, E. 1, 63, from S. 4, on the opposite side of the canal, and division line between Ebenezer Johnson, Samuel Wilkinson and the Holland company, former owners. Course of their line, S. 15, W. 12 feet to canal or basin.

At 58 links west side of Main-street and easterly bounds of Elias Hubbard; course of his line, S. 15, W. 12 feet to canal or basin.

At 2, 66, division line between Elias Hubbard and Ebenezer Johnson and Samuel Wilkinson; course of line S. 15, W. 12 feet to canal or basin.

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### FIELD NOTES :

*Copied by the Committee from Mr. Hutchinson's Field Book.*

Description of the method of executing the survey of the Champlain canal.

On the part of Holmes Hutchinson.

1st. The measurements in the direction of the length of the canal, were made along the inner edge of the towing path, or upon the side of the towing path adjacent to the water. The height of the surface of the towing path, and the inclination of its inner slope, being supposed the same as specified in the transverse profile adopted in the construction of the canal.

2d. The several changes in the direction of the line coinciding with the inner edge of the towing path above mentioned, were referred to the magnetic meridian. The whole line being thus resolved into as many distinct alignments as it contained portions having different courses or bearings.

3d. The several alignments were accurately measured in chains, and the distances upon each to the several points where the lines of roads, counties, towns, patents, lots, &c. intersected the same, together with their courses and bearings, were accurately observed.

4th. The distances likewise to all waste-weirs and culverts, and to all streams that discharged themselves into, or otherwise intersected, the canal, were taken; and the same was done with respect to the road and farm bridges, locks, aqueducts, &c. The distances to the bridges were taken to the lines joining their nearest angles or corner posts of their abutments; those to the locks, to the centre of their nearest quoin posts, and those to the aqueducts, to the faces of their abutments.

5th. Offsets for determining the breadth of the ground occupied by the canal, were made from the alignments upon the towing path, at each angle or station, and likewise at every intermediate place where a change in the breadth of the canal required. The directions of the offsets at the several stations were such as to bisect the angles formed by the alignments on the towing path. The intermediate offsets were described at right angles to, and the distances upon both reckoned from the same alignments in links.

6th. The offsets across the towing path were made to extend at least twenty links, and in every case to reach to the foot of the outer slope of the embankment. The offsets in the opposite direction across the canal, were made to extend at least fifteen links from the margin of the water, and in every case to reach to the foot of the exterior slope of the embankment, if any, upon that side.

7th. The survey above described was made to embrace within its limits all ground pertaining to the canal, including all tracts or lots of land set apart or appropriated to the use of lock-houses, weighlocks, collector's offices, &c. with the names of the former owners, and the date of each title inserted, as far as the same could be ascertained.

8th. Whenever an enlargement in the breadth of the canal rendered the method of offsets above described inconvenient or impracticable, the portions included in said enlargement, was surveyed in the usual manner, by observing the courses and measuring the distances of the several lines that enclosed it on the side opposite to the towing path. By a similar method likewise, the tracts or lots of ground mentioned above as belonging to the people of the State of New-York, were embraced within the limits of the survey.

9th. The results of the measurements made as above described, were inserted in a (this) field book prepared in the following manner. Each page of the book was ruled into parallel lines, one-fourth of an inch distant from each other, near the centre of each page; and at right angles with those lines, a red line was drawn extending across all the pages of the book.

*Note.*—There are two of these lines in this book; that upon which the courses or bearings are written, is the one intended.

10th. The red line above mentioned was considered as representing the line along the inner edge of the towing path, upon which the principal measurements in the direction of the length of the canal were made. The portion of the red line corresponding to any given alignment, was made to embrace in its length as many of the parallel lines as there were chains in the alignment; or if the smallness and number of the objects to be noted, rendered it necessary to enlarge the scale, double the said number of parallel lines were taken as aforesaid.

11th. The offsets for the breadth of the canal were in every case represented upon the larger or double scale, that is, two spaces or half an inch was assumed as equal to one chain. It is to be understood however, that sixty out of the whole number of links in each offset across the canal, was counted as one chain. Those offsets which were formed at the several stations or angles of the alignment

on the towing path, are represented by continued red lines, those which were intermediate, are indicated by the red dotted lines.

12th. In the field book thus arranged, all lines appertaining to the survey were described, as nearly as possible, in their true positions. Likewise all such objects of interest of every description, including roads, streams, buildings, changes in the inclination of the ground, &c. &c. as came within the limits of the book, were carefully sketched; the sketches being executed with greater accuracy through the aid of the parallel lines as above described.

13th. The results of the measurements for the several bearings and distances, were distinctly put down upon the lines to which they respectively belonged, and the whole accompanied by such remarks as were deemed necessary completely to elucidate every thing of importance relating to the survey.

EDWIN F. JOHNSON,  
*Surveyor and Engineer.*

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(D.)

April 20. Produced and read in committee. J. H.

*West Middleburgh, Oct. 13, 1828.*

DEAR SIR,

The Legislature have placed at the disposal of the Canal Commissioners, \$5,000, for the purpose of making a survey and map of the line of the Erie and Champlain canals. By a reference to the act, you will see what is required.

They have received one proposition for making this survey, &c. and will probably not determine the question until next winter.

Under the impression that you might be anxious to engage in this service, I give you this information.

I am yours, with great respect, &c.

W. C. BOUCK.

ASA STARKWEATHER, Esq.  
*Livingstonville.*

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(F.)

Exhibited and read in committee, the 28th day of April, 1832.

*Port Byron, 20th Nov. 1829.*

DEAR SIR,

I have got as far as Rochester with the survey of the canal. The weather being very cold, and considerable ice in the canal, I concluded to stop for this season, and return with my boat to this place, and lay her up in dry dock. I had employed another surveyor to assist me, which required additional hands.

In examining my money concerns, I find I shall want about three hundred dollars to pay off all hands and surveyor, &c. Will you have the goodness to have it so arranged with the Canal Commissioners, that the money can be forwarded to me immediately (by one of the captains on board of the packets,) at this place, where I shall remain until it arrives. Should this way not be convenient, it may be deposited in the Utica Bank in my name, when I can draw my check for the same, and have it cashed at the Auburn Bank. In that case, you will write me immediately. On my return home, I shall call at Utica, and have all matters arranged, &c.

Yours respectfully,

JACOB TRUMBOUR.

HOLMES HUTCHINSON, Esq.  
Utica.

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EXHIBIT G.

May 2, 1832.

COMPTROLLER'S OFFICE. }  
Albany, 12th Oct. 1829. }

SIR,

Enclosed you are furnished with copies of the boundaries or descriptions of all the premises belonging to the State, west of Utica, and connected with the Erie canal, to which any title has been found in this office.

I am, with great respect,

Your obedient servant,

SILAS WRIGHT, JR.

JACOB TRUMBOUR, Esq.  
Utica.

Premises conveyed 3d January, 1824, to the State of New-York, by Jonas Parker and Nancy H. his wife, of Lyons, in the county of Wayne, as follows, viz:

Being a subdivision of lot No. 1, in the gore between the old and new pre-emption lines, south of Mud creek, in the town of Lyons aforesaid, beginning at the end of the southeastern wing wall of the aqueduct on the Erie canal across said creek, thence south fifty-three degrees east, three chains and twelve links, to a beech tree standing on the south bank of said creek; thence south thirty-three degrees west, three chains and twenty-three links, to a post; thence north fifty-three degrees west, three chains and twelve links to a post; thence north thirty-three degrees east, three chains and twenty-three links, to the place of beginning, containing one acre of land.

Premises conveyed 15 December, 1828, to the State of New-York, by Elisha Johnson and Betsey his wife, William Atkinson and Elizabeth his wife, of the village of Rochester, in the county of Monroe, as follows, viz:

All that certain piece or parcel of land, situate, lying and being in the town of Brighton, county of Monroe and State of New-York, being a part of lot number twenty-three, in the third division of township number thirteen, seventh range in Messrs. Gorham's and Phelps purchase, bounded as follows: beginning at the southeast arm or end of the lock now built at the head of the feeder from the Genesee river leading to the Erie canal, being the new lock erected in eighteen hundred and twenty-eight, thence westerly along said lock to the southwest corner of the same; thence southerly, at right angles with said lock, so far as to contain fifty-nine hundredths of an acre, the south bounds to be parallel with the lock, and the easterly boundary parallel to the western boundary, and to be bounded on the south by a street four rods in width. It is understood that the said lot be twelve rods in length.

Premises conveyed 15th day of March, 1827, to the people of the State of New-York, by William Cogswell and Mary Ann his wife, of Pittsford in the county of Monroe, as follows, viz:

All that certain piece or parcel of land, situate in Pittsford aforesaid, and bounded as follows: beginning at the centre of the canal lock called the "Pittsford Lock," and running thence south seventy-five degrees and thirty minutes west, on the line of a piece of land heretofore conveyed to Ira Bellows, three chains and sixteen links; thence north fourteen degrees and thirty minutes west, one chain and seventy-six links, to an oak tree; thence north seventy-five degrees and thirty minutes east, three chains and sixteen links, to the centre of the canal; thence south fourteen degrees and thirty minutes east, one chain and seventy-six links, along the centre of said canal, to the the place of beginning, containing ninety rods of land, be the same more or less.

Premises conveyed twenty-fifth day of April, eighteen hundred and twenty-six, to the people of the State of New-York, by William S. De Zeng and Caroline C. his wife, of Geneva, in the county of Ontario, as follows, viz:

All that certain piece or parcel of land, being canal lot number twenty-six, (No. 26,) near the lock in the village of Clyde, Wayne county, as surveyed by J. M. Gillespie, reference being had to Gillespie's plan and map of said village of Clyde will more fully and at large appear.

Premises conveyed the second day of October, eighteen hundred and twenty-six, to the people of the State of New-York, by Lot Israel and Jane V. his wife, of the town of Galen, county of Wayne, as follows:

All that certain piece or parcel of land, situate in Galen aforesaid, and bounded as follows: beginning at the west end of the lock on the north side of the canal, on lot number forty-two; running thence north nineteen degrees and thirty minutes west, two chains, to the centre of the highway: thence north seventy degrees and thirty minutes east, three chains, to a post; thence south nineteen degrees and thirty minutes east, one chain and forty-one links, to the north bank of the canal; thence south sixty-one degrees east, along said bank, to the place of beginning, containing half an acre.



Premises conveyed the twenty-third day of January, eighteen hundred and twenty-eight, to the people of the State of New-York, by John Puller, of the town of Lyons.

A certain wooden building of the dimensions of twelve feet by eighteen, one story high, standing on the south side of the lock at the foot of Broad-street, in the village of Lyons, and adjoining the towing-path.

Premises conveyed the twenty-ninth day of November, eighteen hundred and twenty-five, to the people of the State of New-York, by Benjamin B. Blossom and Mehitabel his wife.

All that lot or parcel of land lying in Brighton in the county of Monroe, on the north side of the canal, near the fourth lock in said Brighton, calculating the same from the Genesee river, bounded as follows : Beginning on the northerly side of the towing path, distant from northeasterly hollow groin of said lock, one chain and twenty-three links ; thence north four degrees east, two chains and twenty-three links ; thence south eighty-six degrees east, two chains and twenty-four links ; thence south four degrees west, two chains and twenty-three links ; thence north eighty-six degrees west, two chains and twenty-four links, to the place of beginning, containing one half acre, street measure.

Premises conveyed the twenty-third day of November, eighteen hundred and twenty-seven, to the People of the State of New-York, by Elisha Williams and Louisa his wife, of the city of Hudson, county of Columbia, and Reuben Swift and Harriet M. his wife, Waterloo, county of Seneca, as follows, viz :

All that certain piece or parcel of land, situate, lying and being in the village of Waterloo, county of Seneca and State of New-York aforesaid, bounded as follows, viz : Beginning at a stake and stones on the south side of the Cayuga and Seneca canal, forty-nine feet from the middle line of said canal, and forty-eight and a half feet above the head of lock number ten, being the same lock now building by Andrew P. Tilman in the said village of Waterloo ; thence running south twenty-two degrees west, two chains and two links, to a walnut tree ; thence south sixty-eight degrees east, two chains and thirty-eight links, to a stake and stones ; thence north twenty-two degrees east, two chains and ten links, to a stake and stones ; thence south sixty-eight degrees west, two chains and thirty-eight links, to the place of beginning, containing eighty rods or half an acre of ground. It is expressly understood and agreed between the parties, that this deed does not convey any privilege of waters, or of converting the above described lot to any hydraulic purposes whatever.



(H.)

May 2, 1832.

COMPTROLLER'S OFFICE, }  
 Albany, 19th October, 1829. }

Sir,

The enclosed copies of the boundaries of the lands occupied by the lateral canal from the Erie canal to the salt works, at Montezuma, and conveyed to the Canal Commissioners for the use of the State, were inadvertently omitted in my letter to you of the 12th instant.

Respectfully yours, &amp;c.

SILAS WRIGHT, JR.

JACOB TRUMBOUR, Esq.

Premises conveyed to the State of New-York by Chauncey Joes and Maria his wife, of the town of Savannah and county of Wayne, on the twenty-third day of August, 1826.

All such parts of the south half of village lot No. seven, (7) in the village of Montezuma, on the east side of Salt-street, (as the same are described in a certain survey of said village lots, and the lands adjacent, made by Owen Forman in May, 1824, a map of which survey is now on file in the clerk's office of the county of Cayuga) as are occupied by the above mentioned lateral canal, as the same is now surveyed and laid out by David Thomas. Said village lot No. is a part of lot No. 1 in the East Cayuga Reservation, town of Mentz, and county of Cayuga.

Premises conveyed to the State of New-York by Royal Torrey and Nancy his wife, of the town of Montezuma and county of Cayuga, on the twenty-third day of August, 1826.

All such parts of village lot No. ten, situated on the north side of the Erie canal, and all such parts of village lot No. eight, situated on the east side of Salt-street, (as the same are described in a certain survey of said village lots, and the lands adjacent, made by Owen Forman in May, 1824, and described by him in a map of such survey, now on file in the clerk's office of the county of Cayuga,) as are occupied by the above mentioned lateral canal, as the same is now surveyed and laid out by David Thomas. Said village lots Nos. ten and eight are a part of lot No. one in the East-Cayuga Reservation, town of Mentz and county of Cayuga.

Premises conveyed to the State of New-York by Jethro Wood and Silvia his wife, of the town of Ledyard and county of Cayuga, on the twenty-third day of August, 1826.

All such parts of village lots Nos. one and four, situated in the village of Montezuma, on the east side of Salt-street, (as the same are described in a certain survey of said village lots and the lands adjacent, made by Owen Forman in May, 1824, a map of which survey is now on file in the clerk's office of the county of Cayuga,) as

are occupied by the above mentioned lateral canal, as the same is now surveyed and laid out by David Thomas. Said village lots Nos. one and four, are a part of lot No. one in the East-Cayuga Reservation, town of Mentz and county of Cayuga.

Premises conveyed to the State of New-York by George T. Olmstead, of Montezuma, Cayuga county, on the first day of May, 1827.

All such parts of the equal undivided half part of that piece or parcel of land, (described as follows: bounded on the north by the turnpike road, east by farm lot No. one, owned by Royal Torrey, south by village lot No. one, owned by Jethro Wood, west by Comfort Tyler's "acre lot," and James B. Clarke's half acre lot, containing two acres and sixty-six hundredths of an acre of land, as the same is described in a certain survey of village lots and the lands adjacent, made by Owen Forman in May, 1824, and described by him in a map of such survey now on file in the clerk's office of the county of Cayuga,) as are occupied by said lateral canal, being a piece or strip eighty feet wide, commencing from the east line of the embankment, as the same is now surveyed and laid out by David Thomas, and extending across the whole of the aforesaid piece or parcel of land. Also all such parts of village lot No. five, on the east side of Salt-street, (as are occupied by said lateral canal,) as the same is described in the above mentioned map made by Owen Forman and filed in the clerk's office of the county of Cayuga as aforesaid. Also one equal undivided tenth part of the land occupied by said lateral canal, on the following described piece or parcel of land, beginning at the southeast corner of J. Bogert's lot, running thence southerly parallel with Salt-street two chains and one link; thence south fifteen minutes, east four chains and thirty-five links; thence south eight degrees and fifteen minutes, west four chains and seventy-five links; thence north eighty-five degrees, east far enough and east from the place of beginning far enough to include five acres and an half of land. The above described pieces or parcels of land are parts of lot No. one in the East-Cayuga Reservation, town of Mentz and county of Cayuga.

Premises conveyed by George W. Fitch, of the village of Montezuma and County of Cayuga, to the State of New-York, on the twenty-seventh day of April, 1827.

All such parts of village lot number nine, on the east side of Salt-street, (as the same is described in a certain survey of said village lots and the land adjacent, made by Owen Forman in May, 1824, and described by him in a map of such survey now on file in the clerk's office of the county of Cayuga,) as are occupied by said lateral canal, being a piece or strip eighty feet wide: commencing at the east line of the embankment, as the same is now surveyed and laid out by David Thomas, and extending across the whole of said village lot number nine. Also, one equal undivided half part of the land occupied by said lateral canal, as the same is now surveyed and laid out by David Thomas on the following described piece or parcel of land: beginning at the south east corner of John Bogart's lot, running thence southerly, parallel with Salt-street two chains and one link; thence

south fifteen minutes, east four chains and thirty-five links ; thence south eight degrees and fifteen minutes, west four chains and seventy-five links ; thence north eighty-five degrees, east far enough and east from the place of beginning far enough to include five acres and a half of land. The above described pieces or parcels of land are parts of lot number one, in the East Cayuga Reservation, town of Montz and county of Cayuga and State of New-York.

Premises conveyed to the State of New-York by Job Tyler and Jean his wife, of Montezuma, in the county of Cayuga, on the seventeenth day of July, 1827.

All such parts of village lots number two, three and four, situated on the east side of Salt-street, (as the same is described in a certain survey of said village lots and the land adjacent, made by Owen Forman in May 1824, and described by him in a map of such survey now on file in the clerk's office of the county of Cayuga) as are occupied by the said canal, as the same is now surveyed and laid out by David Thomas. The above described premises being part of lot number one, in the East Cayuga Reservation.

Premises conveyed the twenty-third day of August, 1826, to the People of the State of New-York, by Comfort Tyler and Elizabeth his wife, of the town of Montezuma, county of Cayuga, as follows, viz :

All such parts of village lot number six, situated on the east side of Salt-street, as the same is described in a certain survey, of said village lot and the land adjacent, made by Owen Forman, in May, eighteen hundred and twenty-four, and described by him in a map of such survey, now on file in the clerk's office of the county of Cayuga, as are occupied by said canal, as the same is now surveyed and laid out by David Thomas. Also nine equal undivided twentieth parts, and one equal undivided fortieth part, of the land occupied by said lateral canal, on that piece or parcel of land described as follows : Bounded on the north by the turnpike road ; east by farm lot number one, owned by Royal Torrey ; south by village lot number one, owned by Jethro Wood ; west by Comfort Tyler's acre lot, and James B. Clark's half acre lot ; containing two acres and sixty-six hundredths of an acre of land, as the same is described in the above mentioned map made by Owen Forman, and filed in the clerk's office of the county of Cayuga as aforesaid.

Also one equal undivided tenth part of the land occupied by said lateral canal, on the following described piece or parcel of land : Beginning at the southeast corner of John Bogert's lot ; running thence southerly parallel with Salt-street, two chains and one link ; thence south fifteen minutes east, four chains and thirty-five links ; thence south eight degrees and fifteen minutes west, four chains and seventy-five links ; thence north eighty-five degrees east far enough, and east from the place of beginning far enough to include five acres and one half of land. The above described pieces or parcels of land are parts of lot number one in the East Cayuga reservation, town of Montz and county of Cayuga.

Premises conveyed the twenty-seventh day of July, eighteen hundred and twenty-seven, to the People of the State of New-York, by Asher P. Osborn and Peggy his wife, and Walter W. Fenlon and Eunice his wife, all of Montezuma in the county of Cayuga, as follows, viz :

One equal undivided fourth part of the land occupied by said lateral canal, as surveyed and laid out by David Thomas, on the following described piece or parcel of land : Beginning on the south-east corner of John Bogert's lot ; running thence southerly parallel with Salt-street, three chains and one link ; thence south fifteen minutes east, four chains and thirty-five links ; thence south eight degrees and fifteen minutes west, four chains and seventy-five links ; thence north eighty-five degrees east, far enough, and east from the place of beginning, far enough to include five acres and one half of land. The above described piece or parcel of land being part of lot number one in the East Cayuga reservation, county of Cayuga and State of New-York.

Premises conveyed the sixth day of December, 1826, to the State of New-York, by Robert Muir and Nancy his wife, of the town of Auburn, county of Cayuga, as follows, viz :

All such parts of the equal north half of village lot number seven, on the east side of Salt-street, as the same is described in a certain survey of said village lots and the land adjacent, made by Owen Forman, in May, eighteen hundred and twenty-four, and described by him in a map of such survey, now on file in the clerk's office of the county of Cayuga, as are occupied by said lateral canal, as the same is now surveyed and laid out by David Thomas. Also one equal undivided twentieth part of the land occupied by said lateral canal, on that piece or parcel of land described as follows : Bounded on the north by the turnpike road, east by farm lot number one owned by Royal Torrey, south by village lot number one owned by Jethro Wood, west by Comfort Tyler's acre lot and James B. Clarke's half acre lot, containing two acres and sixty-six hundredths of an acre of land, as the same is described in the above mentioned map made by Owen Forman, and filed in the clerk's office of the county of Cayuga as aforesaid. Also one equal undivided twentieth part of the land occupied by said lateral canal, on the following described piece or parcel of land : Beginning at the southeast corner of John Bogert's lot ; running thence southerly parallel with Salt-street, two chains and one link ; thence south fifteen minutes east, four chains and thirty-five links ; thence south eight degrees and fifteen minutes west, four chains and seventy-five links ; thence north eighty-five degrees east, far enough, and east from the place of beginning, far enough to include five acres and an half of land. The above described pieces or parcels of land are parts of lot number one in the East Cayuga reservation, town of Mentz and county of Cayuga.

## EXHIBIT K.

In committee, 11th May, 1832.

COMPTROLLER'S OFFICE. }  
Albany, 12 May, 1830. }

SIR,

Agreeably to your request, I enclose you copies of the description of premises purchased for the use of the Champlain Canal and the eastern section of the Erie, to which any titles have been found in this office.

The maps and papers, deposited in the canal room, relating to the Crooked lake canal, have this day been forwarded to you by the Utica line boat "*East Point*" of Utica, Patterson, master, to the care of the collector at Utica, of which it may be well for you to advise him, that the package may not be carried by.

It is expected that you will return them again to this office.

I am respectfully,

Your ob't. serv't.

SILAS WRIGHT, JR.

HOLMES HUTCHINSON, Esq.

Utica.

Care of T. M. Francis, collector.

Premises conveyed 7th January, 1824, by Jno. W. Peck and Gossanna his wife, of the town of Rotterdam, in the county of Schenectady, to the people of the State of New-York, as follows, viz:

All that certain piece or parcel of land, lying and being situate in the town, county and State aforesaid, and bounded as follows: Beginning at the southerly corner of my land adjoining J. Maber and J. Swart, and runs from thence on the line and bounds of J. Maber's land, north fifty-six degrees west, one chain forty-two links; thence north fifty-six degrees east, four chains and twenty-seven links, to the westerly side of lock-house number twenty-four, and nine feet from the northwest corner thereof; thence south fifteen degrees and forty-five minutes east, parallel with canal bank one chain thirty-nine links, to the line of land owned by J. Swart; then south fifty-six degrees west, along said Swart's line three chains and thirty-two links, to the place of beginning, containing forty-nine hundredth parts of an acre, or nearly half an acre.

Premises conveyed 15th January, 1824, by Peter Fonda and Deueba his wife, of the town of Glen, in the county of Montgomery and State of New-York, to the people of the State of New-York, as follows, viz:

All that certain piece or parcel of land lying, and being situate in the town, county and State aforesaid, and bounded as follows: Beginning at stake bearing south twenty-two degrees and forty-five minutes west, thirty links from the water rod of south culvert gate, in lock No. 18; and runs from thence south twenty two degrees and forty-five minutes west, two chains and fifty links; thence south

sixty-seven degrees and fifteen minutes east, two chains; thence north twenty-two degrees and forty-five minutes east, two chains and fifty links; thence south sixty-seven degrees and fifteen minutes west, two chains to the place of beginning, containing half an acre.

Premises conveyed the 10th August, 1825, by Henry Maleroy and wife, of the town of Florida, county of Montgomery, to the people of the State of New-York.

All that certain piece or parcel of land, lying and being situate in the town, county and State aforesaid, and bounded as follows: Beginning at the southwest corner of lock house number twenty-one, and running south sixty-nine degrees and thirty minutes east, along the bank of canal three chains and nine links; thence south twenty degrees and thirty minutes west, three chains and twenty-five links to stake on hill; thence north sixty-nine degrees and thirty minutes west, three chains and nine links to a spruce stake; thence north twenty degrees and thirty minutes east, three chains and twenty-five links, to place of beginning, containing one acre and a little rising, be the same more or less.

Premises conveyed 25th November, 1824, by Jno. A. Marsellis, Hugh Mitchell and Gesrue Schermerhorn, to the people of the State of New-York.

All that certain piece or parcel of land situate, lying and being in the town of Rotterdam, county of Schenectady and State aforesaid, and bounded as follows: Commencing at the head of said lock on the south side, and running on a line at right angles with said lock, to the highway; thence easterly along said highway to fifty feet easterly from a house at present occupied by Nicholas V. Schermerhorn it being the first dwelling-house west of Lansim Schermerhorn's tavern; thence on a line at right angles with said road to the south bank of the aforesaid canal; thence along the bank of said canal to the place of beginning.

Premises conveyed 11th November 1824, by John A. Ehle and Catharine his wife, of the town of Canajoharie, county of Montgomery, to the people of the State of New-York.

All that certain piece or lot of ground, situate, lying and being in Canajoharie aforesaid, and on which the lock house is placed, and bounded as follows: On the west by the premises of the said John A. Ehle; south by the highway, being west of the dwelling house of Nicholas N. Van Alstine; north by the said Erie canal, and extending east on the highway to a large stone set in the ground, and thence in a straight line to said canal, at a point ten feet below the lock aforesaid.

Premises conveyed 22d February 1826, by Peltg Freeman of the town of German Flatts, in the county Herkimer and State of New-York, to the State of New-York.

All that certain piece or parcel of land, situate on the south side of the Mohawk river in said town of German Flatts, and being part of the farm that the said party of the first part now lives on, and is bounded as follows, viz: Beginning on the south bank of the Erie



canal, opposite lock number four, and on the easterly bounds of the aforesaid farm; and runs thence along the same south nineteen degrees west, one chain and seventy five links to the east bank of the Fulmer creek; thence down along the same north forty-nine degrees west, one chain and twenty-five links to the southwest wing of the aforesaid lock; thence to place of beginning, containing seventeen perches of land, be the same more or less.

Premises conveyed 26th December 1826, by Conrad Rickard of the town Root, county of Montgomery and State of New-York, to the State of New-York.

All that certain piece or parcel of land adjoining the public road that runs along the south side of the Erie canal, and west of the small creek that empties into the Mohawk river east of the Big Nose in the town of Root, county of Montgomery and State of New-York, containing half or three-fourths of an acre of land. ("To dig gravel, stone and clay to repair the Erie canal and other uses.")

Premises conveyed the 1st November 1826, by Nicholas P. Clute, of the town of Rotterdam and county of Schenectady and State of New-York, to the people of the State of New-York.

One half of a certain spring of water situate in the town of Rotterdam, county of Schenectady and State of New-York, on the farm of the said N. P. Clute, near his dwelling house, under or near a large tree that stands about eight rods north of Clute's house.

Premises leased 7th February 1827, by Harmanus A. Van Slyck of the town of Rotterdam and county of Schenectady, to the people of the State of New-York, for six years.

All that certain piece of land situate in the town of Rotterdam, county of Schenectady and State of New-York, and bounded as follows: Beginning at a stake in the fence on the line between John B. Yates and the said H. A. Van Slyck, and running along the said line north seventy-eight degrees west, five chains and thirty-eight links to a small apple tree; thence north twelve degrees east, two chains to stake south side of road that runs along the canal bank; thence south fifty degrees east, one chain and seventy-five links along the said road; thence south sixty degrees east, four chains to the place of beginning, containing eighty rods of land; to take stone and gravel for repairing the Erie canal for the time above mentioned.

Premises conveyed 2d August, 1824, by Samuel Hoar and Timothy J. Campbell, both of the town of Frankfort in the county of Herkimer, to the people of the State of New-York.

All that certain piece or parcel of land situate, lying and being in the town and county aforesaid, and described as follows: Beginning at the south bank of the Erie canal in the centre of the highway where it crosses the said Erie canal below lock No. 1, and running thence along the said highway south eighty-two degrees and twenty-five minutes west, one chain and eighty-nine links; thence north two degrees and fifty minutes west, three chains and seventy-four links, or until it

strikes the southern bank of the Erie canal ; thence down along the said bank to the place of beginning, containing about thirty-four hundredths of an acre of land ; reserving the right and privilege at all times to enter in and upon the above described premises to repair, build and rebuild water conductors or aqueduct logs, penstocks, and all things appertaining or necessary for the conducting of water upon and through the above described premises.

Premises conveyed 2d August, 1824, by Henry F. Myers, of the town of Frankfort in the county of Herkimer, to the people of the State of New-York.

All that or those pieces or parcel of land situate in the town of Frankfort in the county of Herkimer, and bounded as follows : Beginning on the southerly bank of the Erie canal, where the line of lands between the said Henry F. Myers and Andrew Pipers crosses the said canal, and runs thence south forty-three degrees west, one chain and sixty-seven links ; thence south thirty-eight degrees and twenty minutes east, six chains ; thence north forty-three degrees east, one chain and sixty-seven links to the said canal ; thence northwesterly on the bank of the said canal to the place of beginning, containing one acre of land. And also a road leading from the above described premises to the bridge next below lock No. 2, on the said Erie canal and across the said bridge ; and from thence, as the road now runs, to a gate on the line of the highway leading from Albany to Utica, reserving the right and privilege of keeping two gates, to wit : one gate on the said bridge, and one at or on the line of the said highway leading from Albany to Utica.

Premises conveyed the twentieth day of February, 1823, by Nicholas Miller, of the town of German Flatts, county of Herkimer, to the people of the State of New-York.

All that piece or parcel of land lying and being in the town of German Flatts, county of Herkimer and State of New-York, known and distinguished by being a part of lot number twenty-eight in Petrie's patent : Beginning at a stake near the foot of lock No. 7, on the south side of the Erie canal, and running south one chain and sixty links to N. line of road ; thence along the line of said road N. 80 W. three chains and eighty-six links ; thence S. 84 W. three chains ; thence N. 3½ W. seventy-five links to the bank of the canal ; thence N. 82½ E. two chains and ninety-three links along the bank of the canal ; thence N. 88 E. three chains and ninety links to place of beginning, containing seventy hundredths of an acre of land, more or less.

Premises conveyed 30th March, 1826, by George Tibbits, Nathan Warren, Richard P. Hart and Philip Schuyler to the people of the State of New-York.

All those two lots, pieces or parcels of land situate, lying and being in the town of Watervliet, in the county of Albany, known and distinguished on a certain map of the town plot of West Troy, made by William Roberts, junior, for the trustees of the proprietors of West Troy, as lot No. forty-six, situate on the west side of Erie-



street and lot No. seven, situate on the south side of Union-street, lot No. forty-six, being fifty front and rear and one hundred and twenty feet deep, with side lines at right angles with said street; and lot No. seven, being thirty-one feet front and rear and sixty feet deep, with side lines at right angles with said Union-street.

Premises conveyed the fourteenth day of June, in the year 1826, by Thomas Hardin, of Utica, in the county of Oneda, and Priscilla his wife, to the people of the State of New-York.

All that certain piece or parcel of land, being part of subdivision number eight, which is part of great lot number 98, Cosby's Manor, and part of a piece of land deeded to the party of the first part by Arthur Breese and Ann his wife: Beginning at the south bank of the Erie canal at the north-west corner of said piece of land deeded by said Breese and Ann his wife to said Thomas Harden; and running from thence on said Harden's west line to the front of a stone wall standing at the foot of the embankment of said canal; thence on said west line six rods to a stake; thence in an easterly direction to the centre of Nail Creek; thence down the centre of said creek five rods to the south front of the stone aqueduct over said creek; thence along the canal bank to the place of beginning.

### EXHIBIT M.

*In Committee, 12th May, 1832.*

*Onondaga, August 3d, 1831.*

Dear Sir—As you particularly requested me to inform you by letter whether any thing was done or not, by the Canal Board at their meeting on the 28th of July last, in relation to the survey of the canals I now inform you that the Board did not make any order upon that subject. Some of the members of the Board intimated that no order would be made by that Board until a map and field notes were submitted, as required by law; and that they considered it the duty of the Canal Commissioners to have the surveys and maps made.

Yours with respect,

JONAS EARLL, Jun.

JACOB TRUMBOUR, Esq.

(No. 1.)

*In Committee of the Assembly—10th April, 1832.*

*Present—Mr. HOWELL,*

*Mr. McDONALD,*

*Mr. HAMMOND, Chairman.*

*Hiram Greenman's Deposition.*

*Hiram Greenman*, a witness produced on the part of Jacob Trumbour the memorialist, being sworn, deposes as follows:

1 Q. Do you know the hand-writing of Henry Seymour, late acting Canal Commissioner?

[A. No. 336]

4

3

A. I think I do. I know it the same as I know the hand of others whose writing I have not seen more than I have his. I have frequently seen him write.

2 Q. Is the paper now shown to you, marked C, in the handwriting of the said Seymour?

A. I think it his writing. It varies a little, but I think it is his.

The paper is read and marked by the chairman. The following is a copy :

*"Utica, April 7th, 1829.*

*"JACOB TRUMBOUR, Esq.*

*"Dear Sir—The bearer is Mr. Hutchinson, who made proposals for surveying the canals. He will confer with you on the subject of dividing the job with you, and any agreement which you may make with him, not more disadvantageous to the State than Mr. Hutchinson's proposition, will be acceptable to the Canal Commissioners.*

*With much respect,*

*Your obedient servant,*

*HENRY SEYMOUR."*

Sworn and taken in committee,  
the 10th April, 1832. }  
J. HAMMOND, Chairman.

(No. 2.)

*Lot Clark's Deposition.*

The Committee met—April 14, 1832.

*Lot Clark*, a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows :

1 Q. Is the letter which you now hold in your hand in the handwriting of Henry Seymour?

A. It is. I received it from him a few days after it bears date. I believe it was brought to me by Mr. Trumbour himself.

The following is a copy of said letter :

*"Utica, Dec. 7th, 1829.*

*"Dear Sir—The engineers who were engaged in surveying the canal have closed their labors for the season, and I am under the necessity of engaging on your behalf to pay them for the journey and time spent at Lockport, which will be an extra expense and charge to them. Judge Trumbour goes out on this service instead of Mr. Hutchinson. I have paid him twenty dollars, which I will charge to you, and the balance you will please pay Judge Trumbour; his charge will be \$3 and all expenses.*

*Yours respectfully,*

*H. SEYMOUR.*

*LOT CLARK, Esq."*

3 Q. Did Henry Seymour, at any time previous to the 29th of November, 1829, inform you that Jacob Trumbour had been em-

ployed by the Canal Commissioners to survey the western part of the Erie canal, or the Oswego, or the Seneca and Cayuga canals?

A. Not to my recollection.

LOT CLARK.

Sworn the 14th April, }  
1832, before me, }

J. HAMMOND, *Chairman of the Committee.*

(No. 3.)

*Surveyor-General's Deposition.*

IN COMMITTEE—Present, the Committee, &c.

*Simon De Witt*, a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows:

1 Q. Did Jacob Trumbour call on you some time about May 1829, and consult you on the plan of survey of the canals to be adopted?

A. I do not recollect the precise time, but I understood it was previous to his entering on that survey. He then explained to me the plan which he meant to adopt in performing that survey, and requested my opinion about it.

2 Q. What was that plan of survey which he so explained to you?

A. It was to make a survey of the ground which belonged to the canal, by taking the courses and distances around it, making minutes of all permanent objects that laid in the way of his survey, or in its vicinity, and by taking cross measurements across the canal from object to object, to check his survey; and ascertain the bounds of private property along the canal; and in his report, to give, with the map, written explanations, and courses and distances.

3 Q. Did you approve of the plan as it was so explained to you?

A. I told Mr. Trumbour that I thought his plan of doing the business would be perfectly satisfactory for the purpose for which it was intended.

4 Q. Have you been informed, or are you apprised of the plan and manner pursued by Jacob Trumbour in making said survey; if so, are they the same explained by him to you in 1829, as you have above stated?

A. I do not know the manner in which the surveys have been made, but samples of the respective surveys and reports of Mr. Trumbour and Mr. Hutchinson, were presented to the Canal Board in the winter of 1830, of the manner in which they intended to make them; as far as I recollect, the sample presented by Mr. Trumbour on that occasion, was conformable to the plan which he had explained to me, but I have no very distinct recollection about it.

5 Q. Do you know at whose request, or upon whose suggestion, those samples were submitted?

A. I believe it was by the request of the Canal Commissioners, or some one of them; that the members of the Canal Board met together to converse upon the subject as to what report of survey would be acceptable to them. I cannot tell at whose particular request the samples were brought there. But I presume that Mr. Hutchinson and Mr. Trumpbour, knowing of the objects of the meeting, came there as a matter of course, and presented them.

6 Q. Do you know whether at the time these samples were so presented, a considerable portion of the respective surveys of Trumpbour and Hutchinson, had already been made? Please to state what knowledge you have upon that subject.

A. I do not know what had been done.

7 Q. Were such or similar samples ever presented to the members of the Canal Board to your knowledge, on more than one occasion?

A. I do not know of but one occasion on which such or similar samples were presented to the members of the Canal Board.

8 Q. Were the parties, Trumpbour and Hutchinson, heard verbally before the members of the Canal Board, on the subject of their respective plans of survey, at the time before alluded to?

A. They were.

9 Q. Was the subject referred to you by the members of the Canal Board, or was your opinion requested thereon by said members?

A. It was not formally referred to me; but it was mentioned that they wished my opinion upon it. It was proposed that I should give my opinion upon it.

10 Q. Did the parties, Trumpbour and Hutchinson, have an informal interview with you on the subject, before you reported or gave your opinion to the members of the Canal Board thereon?

A. I had conversations with them, in which they explained to me their different plans.

11 Q. Had they then commenced and proceeded any way in the said survey?

A. I believe they had, but to what extent I do not know.

12 Q. What report did you make, or what opinion did you express upon the subject of said surveys, to the said members of the Canal Board?

A. I made no formal report, because it was not required; but a conversation ensued among the members of the Board, in the course of which I believe I stated, that my predilections were in favor of making surveys of that kind upon the plan which was generally pursued by surveyors, which is, by giving the bounds and enclosing the property surveyed. That as I was not familiar with the method of making surveys pursued by Mr. Hutchinson, it was with difficulty I could express any opinion about it. I suggested to the meeting, whether it would be improper, upon the supposition each of these surveys would answer the ends contemplated by law, to let each of the parties make separate atlases according to their respective plans. This proposition was not sanctioned by the meeting. No minutes were kept of the proceedings.

13 Q. Do you or do you not recollect, that a majority of the members of the Board, at first, expressed an opinion in favor of your proposition, and that afterwards objections were made by Col. Young on the ground of a want of uniformity?

A. There was, in consequence of my suggestion, a desultory conversation upon the subject, but what members then expressed a sentiment favorable to it or not favorable, I do not recollect. Col. Young did say, and I took it at the time that the other Canal Commissioners agreed with him, that he would not sign a report which should not be made in one uniform manner.

14 Q. Have you examined the specimen or sample of a field book, presented by Mr. Trumbour to the committee, marked Exhibit I. 3d May, 1832, and also the rough draft of his map to which the said specimen refers?

A. I have.

15 Q. Do the said specimen and map, as far as they go, and so far as you have examined the same, shew his survey of the canal to have been made substantially, according to the plan which said Trumbour submitted to you, previous to his commencing his said survey, in the early part of the year 1829?

A. They do. He explained to me in detail the principles upon which he intended to make his survey, and according to which he appears to have gone.

16 Q. Will you look at sec. 4, article 1st, title 9th, of chap. 9th, of the first part of the Revised Statutes, and state to the committee whether in your judgment, the said survey, map and field book, conform to the requirements of the said section?

A. In my opinion they do, if the survey has been made correctly along the bounds of the property belonging to the State, and if the bounds of private property are accurately laid down or noticed.

17 Q. Will you now look at the map and field book of the survey of the Champlain canal, exhibited to the committee by Mr. Hutchinson, and state the principles upon which they appear to have been made, and also state whether in your judgment they conform to the requirements of the aforesaid section, together with your opinion of the relative merits of the two plans, to wit, that of Mr. Trumbour, and that of Mr. Hutchinson?

[The examination is here suspended, at the request of Mr. Hutchinson, in order to give the Surveyor-General an opportunity to examine Mr. Hutchinson's plan.]

A. I have examined Mr. Hutchinson's plan of surveying the property of the State along and including the canal. It appears to have been this: To take the courses and distances along the inner side of the tow-path, and at every angle to have made offsets each way across, and measured the distance of the offsets to the exterior bounds of the canal on the other side, and connected the points of those offsets by straight lines as appears on the map. It appears that he has noted the situation of permanent objects that came in the course of the survey; that he has noted the bounds of private property, whenever they have been crossed by his survey. He has taken the courses and distances around basins, and other projecting waters connected with the canals, and also the situations

of waste-weirs and waters entering the canal. To the 3d branch of the question, I answer as before, if the lines and boundaries are accurate, and truly describe the State property, so as to ascertain the metes and bounds, the survey may answer the purpose of the law. Mr. Trumpbour gives the metes and bounds in the usual way, and Mr. Hutchinson gives the points by which the metes and bounds may be ascertained. The map upon the face of it, gives the metes and bounds, but the description does not.

The Surveyor-General prefers not to answer the latter branch of the question, because the answer may be inferred from the answer already given.

18 Q. (By the committee.) What was the object of the Legislature in directing that survey to be made?

A. It must have been to define the property of the State along the canal, by such means as would afford proper evidence at any time hereafter, if any litigation should arise with regard to the line dividing the property of the State from private property.

19 Q. Was that design coupled with an intention to ascertain private encroachments on the public land along the line of the canal?

A. In my opinion it unquestionably was.

SIMEON DE WITT.

In committee, sworn and taken }  
May 25, in the forenoon, 1832. }  
J. HAMMOND, *Chairman*.

(No. 4.)

*Peter Schenck's Deposition.*

IN COMMITTEE—Present, the Committee and the Memorialists.

*Peter Schenck*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Where do you reside, and what is your occupation?

A. I reside in Granby, Oswego county. I am a merchant now; that is my principal business.

2 Q. Are you a professional surveyor?

A. I have practised surveying. I practised from the year 1823 to the year 1830. It was my principal business.

3 Q. Do you know Henry Seymour, late acting Canal Commissioner?

A. I do.

4 Q. Did you have a conversation with said Seymour, at or near Carrier's Inn, in the village of Fulton in Oswego county, in the summer of 1829, on the subject of surveying the canals?

A. I had.

5 Q. Did you apply to Mr. Seymour for a job of surveying on the Oswego canal?

A. I did.

6 Q. What was his answer to your application?

A. He replied to my question, that Judge Trumpbour had the surveying of that canal, or that it was engaged to him; that if I wanted the work to do, I must apply to him.

7 Q. Did you request Mr. Seymour to give you a letter to Judge Trumpbour, and for what purpose?

A. I requested Mr. Seymour to give me a letter to him, recommending me to survey that canal.

8 Q. What was his reply?

A. He declined giving me the letter; assigning as a reason, that it would appear like an improper interference. I do not profess to give the conversation in the exact order in which it occurred, nor the exact words; but the substance I undertake to give.

9 Q. Did you ask Mr. Seymour whether he was willing you should do the work, provided Mr. Trumpbour would employ you?

A. I did.

10 Q. What was his reply?

A. He replied that he was willing.

11 Q. Did Mr. Seymour give you any message to Mr. Trumpbour, or direct in any way what you might say to him?

A. At my request, or of his own accord, he permitted me to say to Mr. Trumpbour, that he was willing I should survey the Oswego canal, if he, Mr. Trumpbour, would employ me.

12 Q. Did you communicate this to Mr. Trumpbour?

A. I did.

13 Q. Was any thing said in the conversation with Mr. Seymour to which you have referred, about the price of the work; and if so, what?

A. At some part of the conversation, Mr. Hutchinson's name was introduced as a contractor: And in the course of the conversation, I observed to Mr. Seymour, that I considered the sum appropriated was insufficient; and I presumed that notwithstanding the sum was limited, the work would be paid for according to what it would be found to be worth when completed. He replied, that it was contracted to be done for the sum appropriated; that no more would be paid; and if it cost more, or if the contractors Hutchinson and Trumpbour lost by the undertaking, it was a concern of their own, and their loss, if any, must be borne by themselves.

14 Q. At what time in the summer of 1829 did you hold this conversation with Mr. Seymour? State with as much certainty as you can.

A. I think it must have been in the month of July, probably not far from the middle. It was on the occasion of the meeting of the Canal Appraisers. I am confirmed in this opinion by the fact, that I called on Mr. Trumpbour at Port Byron about the last of July.

PETER SCHENCK.

Sworn the 21st April, 1832,  
before me,

J. HAMMOND, *Chairman.*



(No. 5.)

*Mr. Starkweather's Deposition.*

IN COMMITTEE—Present as above.

*Asa Starkweather*, a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows :

1 Q. Where do you reside, and what is your profession or occupation ?

A. I reside in Livingstonville, in the county of Schoharie. My business is land surveying, and that of land agent.

2 Q. How long have you been a professional and practical surveyor ?

A. A little rising of thirty years.

3 Q. Do you know William C. Bouck, an acting Canal Commissioner ; and if so, how long have you known him ?

A. I know him, and have known him since 1806, or thereabouts.

4 Q. Did you at any time receive a letter from Mr. Bouck on the subject of surveying the canals of this State, have you that letter and will you produce it ?

A. I did receive a letter from Mr. Bouck, and now produce it. The following is a copy of said letter :

*"West-Middleburgh, Oct. 13, 1828.*

*"DEAR SIR,*

*"The Legislature have placed at the disposal of the Canal Commissioners \$5000 for the purpose of making a survey and map of the line of the Erie and Champlain canals. By a reference to the act you will see what is required. They have received one proposition for making this survey, &c., and will probably not determine the question until next winter. Under the impression that you might be anxious to engage in this service, I give you this information.*

*"I am yours, with great respect, &c.*

*"WM. C. BOUCK.*

*"A. STARKWEATHER, Esq."*

5 Q. Are you acquainted with the hand writing of Mr. Bouck ; and if so, do you believe the letter produced by you, and marked as Exhibit D, to be in his hand writing ?

A. I do know his hand writing, have seen him write, and believe the letter to be in his hand writing.

6 Q. Did you, after the receipt of this letter, and if so, when and where, have a conversation with Mr. Bouck on the subject to which the letter alludes ?

A. I had a conversation with him at his own house, at West-Middleburgh, now Fulton, in the winter following the date of this letter, on the subject of surveying the canals.

7 Q. Did Mr. Bouck in that conversation explain to you the manner in which the canals were expected to be surveyed ?

A. He did.



8 Q. Will you state what manner as particularly as possible?

A. The survey was to be made to include all the ground encumbered by making the canal, or setting back water; to note all lot lines, town lines, county lines, and to bound and describe such lots as the State had purchased for toll-gatherers or collectors, and such uses of the canal.

9 Q. Was any thing said about lines being run and designated on the ground upon both sides of the canals; and if so, what?

A. I distinctly understood that lines were to be run on both sides of the canals.

10 Q. Did Mr. Bouck say any thing about the sufficiency of the appropriation made for the purpose; and if so, what?

A. He did, and said he had been informed by surveyors that the sum was insufficient amply to compensate for the work to be done.

11 Q. Did you understand from Mr. Bouck what proposition he referred to in his letter to you; and if so, whose?

A. I understood from Mr. Bouck it was a proposition made for the survey of the canals, and by Jacob Trumbour.

12 Q. What did Mr. Bouck say upon the subject of receiving propositions, and the manner in which they would be disposed of?

A. He said he was not at liberty to disclose the proposition of one surveyor to the other, and they would be laid before the Canal Commissioners, at a meeting, and for their benefit.

13 Q. Was any thing said about surveyors having been written to; and if so, what?

A. He said several surveyors in this State had been written to, and he expected there would be several propositions for surveying the canals.

14 Q. Did Mr. Bouck state to you what ought to be the form or character of the propositions; that is, whether they should be definite or might be conditional?

A. He stated that it must be definite, but within the sum of five thousand dollars, limited for making and completing the surveys.

15 Q. Did you subsequently learn that the surveying of the canals had been let; and if so, from whom did you get the information, and to whom were they contracted?

A. I understood William C. Bouck, in a subsequent conversation, that the surveying of the canals had been let to Jacob Trumbour and a Mr. Hutchinson.

16 Q. At what time was this last conversation?

A. It was in the fore part of the summer season of 1829, at a meeting of the Canal Commissioners, in the city of Albany. My impression is it was about the ninth of June, or a little after.

17 Q. Did you request Mr. Bouck to procure from any person, and if so, whom, an estimate of the probable expense of making the returns and maps of the surveys to be made?

A. I did. He suggested to me that the style and workmanship of David H. Burr, would probably be satisfactory to the Canal Commissioners. I asked the favor of him to inquire of Mr. Burr what he would ask for making the maps and copying the field-books.

18 Q. Did Mr. Bouck engage to do it?

A. He did.

19 Q. Did you obtain an estimate from Mr. Burr; and if so, what was its amount?

A. I obtained an estimate of Mr. Burr. The precise amount I forget; it was, however, more than two thousand dollars.

20 Q. (By Mr. Hogeboom.) What was the object of making that inquiry?

A. To ascertain whether I could afford to make the actual survey and still pay that amount for making the maps and field-books out of the appropriation.

21 Q. (By the Chairman.) At what time did this conversation about the maps take place?

A. In the winter of 1829, at my first interview with Mr. Bouck.  
ASA STARKWEATHER.

Sworn the 21st April, 1832, }  
before me, }  
J. HAMMOND, *Chairman*.

IN COMMITTEE—Present, the Committee and the Memorialists.

*Additional deposition of Asa Starkweather.*

*Asa Starkweather*, a witness, produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

22 Q. Have you examined the respective plans of survey adopted by Jacob Trumpbour and Holmes Hutchinson, in surveying the canals of this State, as exhibited in the maps and field notes before the committee?

A. I have partially.

23 Q. Look at the Revised Statutes, part one, chapter nine, title nine, section four, and state which of those plans you, as surveyor, consider most conformable to the requirements of that section, and the reasons upon which your opinion is founded? (Objected to.)

A. If the intention was that the boundaries of the land of the State should be designated so as to distinguish it from the lands belonging to individuals, the plan of Jacob Trumpbour is best calculated to effect that object; but if it was merely to make a map of the premises in question, the plan of Mr. Hutchinson is more simple, and performed with less labor, but would have no preference in point of accuracy.

24. Q. Admitting the object was that the boundaries of the land of the State should be designated so as to distinguish it from the lands of individuals, then why do you prefer Judge Trumpbour's plan?

A. By running upon the exterior bounds, setting stakes, marking trees, or whatever happened to be in the line, would leave the bounds visible on the land for the benefit of adjoining occupants, and by taking check lines across, would from time to time, as often as taken, enable the surveyor to ascertain the correctness of his work thus far.

**25 Q.** Do you consider the plan pursued by Jacob Trumbour conformable to the description of survey which you received from William C. Bouck, Acting Canal Commissioner, at the time you enquired of him how the work was to be done? (Objected to on the part of Mr. Hutchinson.)

**A.** I do, and as a further reason to the previous question for preferring Judge Trumbour's plan of survey: By running upon his plan, (the exterior lines,) it enables him to include precisely the ground described as State property, which it would be difficult to do upon Mr. Hutchinson's plan of cross sections, unless stakes, flag-staff, or some visible monuments were on the bounds set, to enable a surveyor or a competent person to range from station to station to see whether it would include all the property belonging to the State and no more, and this would especially occur on curved lines.

**26 Q.** Can you, from Hutchinson's map and field book, without further survey or measurement, ascertain the situation or extent of any encroachments upon the State land?

**A.** I think not.

**27 Q.** Upon the plan pursued by Jacob Trumbour, when his maps and field books are compiled, may the situation and extent of every encroachment existing at the time the survey was made be ascertained?

**A.** It can.

#### *Cross-Examined.*

**28 Q.** Do you intend to say in your direct examination, that lines can be measured in the ordinary mode of chaining, as by Mr. Trumbour's plan, in the lines of the exterior bounds of the canal, where there are woods, thick brush, swamps, marshes, rocks, as at Little-Falls and other places, where the out bounds of the towing-path are in the bed of a river, with as much accuracy as the measurement can be done along the even surface of the towing-path, as in Hutchinson's survey?

**A.** I think not. Without extraordinary pains it could not.

**29 Q.** Would there be any difficulty in ascertaining precisely the ground described as State property, when making the survey on Hutchinson's plan, if stakes and flag-staffs were set at every angle in the outer boundaries?

**A.** There would be more difficulty in surveying a canal than a turnpike road, if done by one surveyor; as I conceive it would be necessary for a surveyor or competent person to see that the stations were at proper distances, and to range from station to station on the out bounds, so as to judge whether the stations included the State property and no more. The difficulty by one surveyor would be the crossing the canal from side to side to arrange those, to determine the situations of the stations, and to set them.

**30 Q.** If such stakes and flag-staff were set by competent persons, other than a surveyor, would the difficulties mentioned in your answer to the last question occur?

**A.** They would not if the angles were not too wide apart.

**31 Q.** (By the committee.) Can you, on the plan of Mr. Trumbour's survey, without further measurement, ascertain the exterior bounds of the State property on a line of a mile in length, without stakes being set in such line?

**A.** If the survey was properly made, and the field book or notes regularly kept, it may be done by a traverse with the compass without measurements.

**32 Q.** Can you, without further measurement or calculations, give the courses and distances of the out lines of the land taken for the canal from any farm; for instance, that of Walter Osborn, by Mr. Trumbour's survey?

**A.** A calculation would be necessary.

**33 Q.** How would you make that calculation? State particularly.

**A.** On the principles of latitude and departure, the courses and distances on each side of the canal from the lot line to the check line being given, and the course and distance of the check line being also given, we then have three sides of the field given to find the fourth. The same problem applies to each part of the farm on both sides of the check line.

**34 Q.** By what rule would you ascertain the distance across the canal, and how would you do it?

**A.** The rule for ascertaining the length and course of the closing line is particularly given in Moore's Survey, and also in Gibson's, where it is distinguished as the Pennsylvania method of computing contents. The latitude and departure of the sides given when summed up, the difference of their footings represents in chains and links the two legs of a right angle triangle. The hypotenuse of which is the length of the lot line across the canal, and is the distance required.

**35 Q.** Suppose the nearest check line to be one mile distant from the lot line, would you be certain by your calculations that you obtained the lot line exactly?

**A.** It would be considered extraordinary, rather than otherwise, if the northings and southings, or eastings and westings, should exactly balance, but the inaccuracy is in the practice and not in the rule.

**36 Q.** How great may the variation be in the length of the lot lines so found, from surveys as they are ordinarily made?

**A.** A small variation is allowed, and the variation may be in proportion to the size of the lot enclosed. In a lot of one hundred and sixty acres, the variation ought not to exceed twenty-five links, and that would be called a good survey. A mile in length, one chain wide, would be eight acres, and the variation would be a proportionable part. If the ground was very rough it might be a little more as to the proportional part; I mean as to the contents or quantity of the land surveyed.

**37 Q.** In stating, as you have, Mr. Hutchinson's method of survey has no preference in point of accuracy, is the committee to understand that you consider the measurements by chain and compass along the out lines as accurate as those made by the same instruments upon the towing-path?

A. It would not give the length of the canal with that precision as it might be measured upon the towing-path; every other measurement would be equally accurate as if done upon the plan of Mr. Hutchinson.

38 Q. In determining hereafter the location of the outlines of the canal upon Mr. Trumbour's survey, upon which would you place a principal reliance, the courses of the line as obtained by the compass, or upon offsets to the canal?

A. I believe it is a settled rule, established by the supreme court, that metes and bounds shall govern the magnetic course; to determine the exterior bounds of the State property, would be by measurements noted in the primitive survey.

39 Q. Upon which do you consider the most reliance can be placed, as a standard of reference hereafter, the margin of the water in the canal or the inner edge of the towing path, from which to make offsets?

A. If the offsets are made from the exterior lines, to designate the navigable part of the canal, then the water's edge is preferable; but if for the purpose of giving the distance of the exterior lines from the canal, then I should give the preference to the inner edge of the towing path.

40 Q. So long as the inner edge of the towing-path is adopted by Mr. Hutchinson, as his base line remains unchanged, or can be restored, can the extent of any encroachment be at any time ascertained from his survey by measurement only, without a compass?

A. If the manner by which the primitive survey was made is clearly described in the field book, I could, by the chain only, restore or make the primitive out bounds or stakes, agreeable to Mr. Hutchinson's plan of survey; and if such bounds or stakes are within view of each other, I could determine what, and how far encroachments were made.

*Further examination on the part Mr. Trumbour.*

41 Q. How would you determine where the base line was, in the case last referred to?

A. I should think it could not be on the inner edge of the towing-path, particularly where the canal curved, because I think it could not be chained there; I do not know, from any description I have seen in the field book how I should locate it, precisely.

42 Q. Would not the correctness of the offsets depend entirely upon the correct location of the base line?

A. It would.

43 Q. Can not the exterior lines be run with equal accuracy, as to length, as the base line, by taking the necessary labor and care in chaining them?

A. Yes, it might.

44 Q. Could the out lines of the State property be surveyed, in case it should become necessary to ascertain them through thick woods, swamps, marshes and rocks, as at the Little-Falls, and other places, where the out bounds of the towing-path are in the bed of a river, by the data afforded by Mr. Hutchinson's plan, with any

greater accuracy than they could be originally run upon Trumpbour's plan?

A. I think not.

45 Q. Can you, on the plan of Mr. Trumpbour's survey, without further measurement, ascertain the exterior bounds of the State property on a line of a mile in length, without stakes being set, provided there were bridges, trees and other objects marked and designated along that line?

A. If the bridges and other objects noted are within visible distance of each other I could.

46 Q. Could you ascertain the line from the points of offsets on Hutchinson's survey, without further measurements and calculations in any case where, by reason of woods, brush, knolls, buildings or other objects, the sight from one point to the next was obstructed?

A. No.

*Further examination on the part of Mr. Hutchinson.*

47 Q. Do you or do you not consider that the base line along the inner edge of the towing-path may be located with more certainty and precision at any future time than either of the outlines?

A. The answer to that question will depend upon the performance of the work; the inner edge of the towing-path is liable to wash and wear, the outer lines located from it by a given measurement or determinate distance, will be unsettled as the base line may vary. But if the outlines were run and located by permanent objects, as for instance, stone buildings or other objects of equal permanency, the outlines would then be immoveably fixed; so if the outlines were once ascertained and designated by like objects by measurements from the base line, they would in that case be equally determinate.

48 Q. How would you make a survey of the canals, on Mr. Trumpbour's plan where the outlines ran through thick brush, swamps, marshes, rocks, as at Little Falls and other places, along the bed of a river or deep water?

A. The rules and practice of surveying admit of several modes of surveying difficult places, as pointed out in the question; for instance, through thick brush, if the distance from the station to the flag-staff should be so short that the number of stations would occupy more time than to cut away the brush, in that case, the surveyor would save time by directing it to be cut away. The question as it appertains to the out bounds, being in the bed of a river for a short distance, two or three chains, the measure may be taken upon the outbounds without scale, dividers or tables, as will appear by the following diagram:

Suppose this book to be a section of the river adjoining the canal, and the State property to extend eight feet beyond the outer edge of the embankment into the river, and the situation of the river to be down rocks where it is impracticable for the surveyor to run his line; at the commencement of this place I would drive a stake; at the end of it, (if within visible distance) I would send the flag-staff; take the course from the station to the flag; from the station at right



angles, send another flag-staff to a distance greater than the distance of the difficulty ; direct an assistant to stand at the station ; I now move my compass on the line at right angles with the course of the State property ; by repeated trials I find the spot where the compass when set would strike the first set flag-staff, making an angle of 45 degrees with the offsets or right angle line. The distance from the compass to the station is the precise distance of the outer edge of the State property to be measured, or in other words, the length of the difficulty.

49 Q. Would the rule you have just described be applicable to the measurement of the out bounds with different courses, and the distance of a mile in length in the river with a high and steep hill directly on the opposite side of the canal ?

A. It would not.

50 Q. In the case last referred to, how would you obtain the measurement ?

A. I think it probable by making an offset and taking the measurement on adjacent ground with different courses until past the difficulty.

*Further examination on the part of Judge Trumbour.*

51 Q. How would you then ascertain the course and distance of the true line ?

A. By calculation.

ASA STARKWEATHER.

Sworn and taken in committee }  
the 11th May, 1832. }  
J. HAMMOND, *Chairman.*

(No. 6.)

*Edwin F. Johnson's Deposition.*

IN COMMITTEE—April 23, 1832.

Present, Mr. HAMMOND,  
Mr. M'DONALD,  
Mr. HOGEBOM,

*Edwin F. Johnson*, a witness produced on the part of Jacob Trumbour, being duly sworn, deposes and says :

1 Q. What is your age ?

A. Twenty-eight ; nearly twenty-nine years.

2 Q. What is your occupation ?

A. Civil engineer and surveyor.

3 Q. How long have you followed those branches of business ?

A. It is about fifteen years since I commenced the practice of surveying.

4 Q. Have you during that time followed any other branch or branches of business ? If so, state what, and what portion of the time, as particularly as you can recollect ?

A. I am not aware that I have followed any branch of business with which surveying was not in some measure connected. The most of my time since 1823, has been devoted to instruction in the mathematical department of the institution of Capt. Partridge. Surveying, both theoretical and practical, being one of the branches under my immediate charge.

5 Q. Did you survey the Champlain canal, and that part of the Erie canal east of Canastota, in the State of New-York?

A. I did.

6 Q. With whom did you contract to do it, and at what time was that contract made?

A. With Holmes Hutchinson, of Utica. I believe I signified my willingness to engage in the survey about the first of June, 1829, but the arrangement was not completed until about the middle of September, in the same year.

7 Q. At what time and where did you commence the said survey?

A. Near the middle of October of the same year, at Canastota.

8 Q. What portion of said survey, and how many miles thereof did you make in 1829?

A. I surveyed that portion of the Erie canal lying between Canastota, and the west line of the township of German Flats, with the exception of about three miles through the village of Utica. I do not know the precise number of miles, probably about forty-five.

9 Q. Did you make the map and field book of the survey of the Champlain canal?

A. The field book was made by me, and the maps were made principally by me. The book is the same used in the survey, and the minutes of the measurements therein, together with those upon the maps were made exclusively by me.

10 Q. Where are the said map and field book?

A. They are the same here produced; the same which were deposited in the canal room by Mr. Hutchinson.

11 Q. Did you yourself adopt the plan upon which that survey was commenced, without the advice, aid or direction of any other person?

A. I did not.

12 Q. Was that plan first suggested to you by another, or did you first suggest it to another?

A. It was devised, I believe, principally by myself, at the request of Mr. Hutchinson.

13 Q. When did Mr. Hutchinson make that request?

A. I think it was between the 12th and 15th of September, 1829.

14 Q. At what time did you first communicate to Mr. Hutchinson the plan of survey?

A. I think it could not have been later than the 15th or 20th of September.

15 Q. When you so communicated said plan of survey to Mr. Hutchinson, did he present or communicate to you any different plan?



A. I cannot state with certainty of the plans which were discussed; the one sanctioned by Mr. Hutchinson, was the one adopted.

16 Q. Did he present to you any different plan?

A. My recollection does not serve me whether he did or not.— There were but two distinct general plans that presented themselves for consideration in relation to the mode of making the measurements. Mr. Hutchinson may have made suggestions in relation to the details of both plans. My own views were solicited and given, I believe, before those of Mr. Hutchinson were made known to me.

17 Q. What was the other general plan of survey presented or communicated at the time, besides the one adopted?

A. It was that of measuring separately the lines upon each side of the canal, which constitute the limits or boundaries of the State property. This is merely an outline of the plan.

18 Q. Did you and Mr. Hutchinson at any time during that discussion have different views as to the preferable plan of surveying?

A. I am not aware that we had.

19 Q. Did you know or had you been informed at the time you adopted the said plan, what plan was pursued by Judge Trumpbour on the other part of the canals?

A. I cannot say whether I was informed of it at that time or very soon after. I wish to be understood as referring to the outlines of the plan pursued by Mr. Trumpbour. Some of the details were communicated to me, but whether all or not it was not possible for me to know.

20 Q. (By the Committee.) From whom did you receive that information concerning the outlines of that plan?

A. From Mr. Hutchinson.

21 Q. (By the Committee.) Had Mr. Hutchinson at that time commenced that survey?

A. He had not upon that portion of the canals on which I was engaged.

22 Q. Did you make any part of your map or field book, deposited in the canal room as aforesaid, prior to the 29th of November 1829?

A. I did not.

23 Q. (By the counsel of Mr. Trumpbour.) Was it prior to the said 29th of November that you received the information of the outlines of Judge Trumpbour's plan?

A. It was.

24 Q. Did you survey any portion of the Champlain canal in 1829; and when did you commence it?

A. I did not. I commenced it on or about the 28th June, 1830.

25 Q. Did Mr. Hutchinson assist you in his own person in making any portion of the survey of said canals?

A. He did so a short time at the commencement, and was present occasionally at other times to direct.

26 Q. What did he do in so assisting, and what directions did he give when so present?

A. He aided in making the measurements, and surveyed the three miles through the village of Utica. His directions were generally to conform to the plan of survey as previously adopted.

27 Q. (By the committee.) What other aid did Mr. Hutchinson render in the prosecution of the work?

A. He furnished the pecuniary means for making the survey, together with instruments, hands, &c. and gave some useful information derived from previous surveys.

28 Q. (By the counsel of Mr. Trumbour.) What was that information with regard to previous surveys?

A. It consisted, 1st, of a description of lots of land conveyed to the State by different individuals for the purposes of the canal. This description was obtained from the Comptroller's office. 2dly, Of a set of field books of the surveyor of the Erie canal from Rome to Schenectady, together with maps of the canal from Utica to Schenectady; and 3dly, of two books giving the quantity of ground occupied by the canal, from Utica to Schenectady. These books I understood were used by the canal appraisers when the damages were assessed.

29 Q. Do you know, or have you any information where these field books and maps and the other two books mentioned in your last answer now are?

A. They are at my residence in Middletown, Connecticut.

30 Q. Do you know how or where they were obtained by Mr. Hutchinson, when he so furnished them to you?

A. The survey and maps were, as I supposed, made by Mr. Hutchinson.

31 Q. Where did he obtain them at the time he furnished them?

A. I cannot tell.

32 Q. The other two books: Do you know how or where he obtained them?

A. I do not.

33 Q. Do you know by whom the aforesaid two books, giving the quantity of land belonging to the canal, were made?

A. I do not.

34 Q. Will you state fully the use you made of the said two books and the said map and field book, in making such survey?

A. They were used principally as guides, for ascertaining the lines of the different lots or farms through which the canal passed, and the names of the former proprietors. The field books contained the courses and distances along the line of the canal, with the length of the portion included in each lot or farm, and I believe the average width. The map I supposed to be an accurate plot from the field books.

The two books contained the quantity of ground taken from each lot or farm for the purposes of the canal. These estimates of quantities I supposed were not intended to be exact, but merely approximations to aid in the assessment of damages.

35 Q. Did said map and field book, or either of them, exhibit the outlines of the lands appropriated to the use of the State?

A. They did not.

Present the Committee—*April 24, 1832.*

36 Q. Did said map and field book, and the said two other books or either of them, enable you to ascertain the actual and exact boundaries of the State property?

A. They did not.

37 Q. Who gave you directions what lands to include in your said survey?

A. Mr. Hutchinson.

38 Q. Did you or did you not receive any instructions from the Canal Commissioners, or either of them, as to the lands to be included in the survey?

A. I did not.

39 Q. Did you or did you not receive any instructions from the Canal Commissioners, or either of them, as to the plan to be adopted in making the survey?

A. I did not.

40 Q. Were the Canal Commissioners, or either of them, present at any time when you were surveying the said canals?

A. I do not recollect that they were.

41 Q. How much of the Erie canal had you completed on the 30th June 1830?

A. I had completed the whole from Canastota to Albany.

42 Q. What lands and premises did Mr. Hutchinson direct you to include in your survey? State the particulars fully.

A. I was directed by Mr. Hutchinson to include in the survey, twenty links from the base line on the side of the towing-path, and fifteen links from the margin of the water on the berm side; these distances to be increased in all cases wherever required for the purpose of including embankments and other appendages necessary to the uses and purposes of the canal.

43 Q. Were you directed by him to include all basins, as well those made by individuals as others?

A. I was, and instructed likewise to make the measurements in such a manner that the basins might be excluded, in case the Canal Commissioners should not think proper to bring them within the limits of the survey.

44 Q. Have you seen Holmes Hutchinson and Henry Seymour, or either of them, write; and are you acquainted with their hand-writing?

A. I am acquainted with the hand-writing of Mr. Hutchinson, but not of Mr. Seymour.

45 Q. Is the signature of Holmes Hutchinson, subscribed to the paper shewn to you, marked Exhibit E, the proper hand-writing of Holmes Hutchinson?

A. I should judge, from the appearance of the signature, that it was Mr. Hutchinson's hand-writing.

46 Q. (By the committee.) What is meant by the base line?

A. It is the line upon which, in Mr. Hutchinson's survey, the principal measurements in the direction of the length of the canal were made. It is situated along the inner edge of the towing path, and is indicated upon the map by the continued red line.

47 Q. (By the counsel of Mr. Trumbour.) Did you, in surveying the said canals, measure the outlines of the State lands with the chain and compass, upon the ground?

A. I did not, except in some few cases, for the purpose of enclosing basins.

48 Q. Have you the means of telling, from your survey map and field-book, or either of them, as they now exist, without further measures or calculations, what buildings and other erections stood, in whole or in part, upon the State property at the time of the survey?

A. The question supposes that I am acquainted with the location of the lines of the State property, which I am not, because I do not know whether the Canal Board have adopted or sanctioned the surveys which I made.

49 Q. Have you the means of telling, from your survey map and field-book, or either of them, as they now exist, without further measures or calculations, what buildings or other erections stood, at the time of your survey, in whole or in part, within the outer or blue lines of your aforesaid map?

A. I was not directed to notice any interference or encroachment by the erection of buildings on the State property. The object of the survey was to obtain the means of determining, at any future day, with the greatest practicable degree of precision, the boundaries of the State property; and it was with reference to that leading object that all the measurements were made. A reference to the buildings situated as above mentioned, was not generally made, because the buildings were, the great proportion of them, groceries, sheds, &c. of a temporary structure, and could not be relied upon as permanent objects. In consequence of this, it became necessary to order the survey in such a manner as to render such reliance unessential.

50 Q. (By the committee.) Can you give any other and more direct answer to the last question, than that which you have given; and if so, what is that answer?

A. With respect to the "other erections" referred to in the question, I can say, that in the measurements, reference was made to all permanent objects or appendages connected with the canals.

51 Q. By objects connected with the canals, do you mean any other than such objects as formed part of the public works?

A. I do not, provided the road and farm bridges which are erected over the canals are considered parts of the public works.

52 Q. Have you now described all the private buildings and erections which were upon the public lands at the time of the survey, designated by you therein?

A. I believe I have.

53 Q. (By the counsel of Mr. Trumbour.) Have you the means of telling, from your survey map and field-book, or either of them, what groceries or sheds of a temporary nature stood, at the time of your survey, in whole or in part, within the blue lines of your map?

A. The instances of buildings thus situated, are, I believe, all exhibited upon the map.

54 Q. Will you take those documents, and point out to the committee those groceries or sheds?

A. On the first page or sheet of Atlas No. 1, in the village of Whitehall, are several buildings which stand, either in whole or in part, within the limits of the blue lines. On the second page, there is but one. On the nineteenth page, at the village of Fort-Ann, there are three. On the thirty-sixth page, there are two, viz. a saw mill which stands wholly, and a flouring mill partly, within the limits of the blue lines. On the forty-first page, in the township of Fort-Edward, there is one, and on the forty-fourth, two buildings, either wholly or in part within the blue lines. These I believe are all the private buildings exhibited in the first number of the atlas, as standing within the blue lines.

55 Q. Can you ascertain from your survey map and field-book, or either of them, without further measures and calculations, how many feet and inches, or chains and links, any of the buildings by you above pointed out as standing on the State property, encroach thereon, according to the blue lines designated upon said map?

A. I cannot. The means necessary for ascertaining the precise extent of such encroachments are, however, amply afforded by the map and field-book, should they at any time be required. Upon the Erie canal, where those encroachments are more frequent, they were occasionally noted. The instances of encroachment pointed out upon the map, exist in the immediate vicinity of the canal locks; which, as they are a more permanent object, a reference to them for the purpose of establishing the location of the lines of the State property, rendered a reference to buildings for the same purpose unnecessary.

56 Q. (By the committee,) Do you intend to be understood as saying, that buildings are not considered by surveyors as permanent objects or land-marks, in surveying?

A. I do not. I alluded to the comparative permanency of buildings and of canal locks in masonry, particularly buildings of wood without stone foundations, which is the case with many of those pointed out upon the map.

57 Q. Is a canal lock a more permanent object than a house constructed of like materials?

A. There is this difference between them, that a house or other similar building, is more liable to be moved or varied, or altered in its dimensions, than a canal lock.

*April 25, 1832.*

The committee met, &c.

58 Q. (By the counsel of Mr. Trumbour.) Can you by your map and field book, without any further measures or calculation, ascertain how far any one building upon the whole line of the Champlain canal where you surveyed, encroaches upon the State property as designated by the blue lines upon your map?

A. I cannot reply with certainty to this interrogatory, without previously examining the field book. As already remarked, the means necessary for ascertaining the precise extent of such encroach-

ments, are amply afforded by the map and field book, should they at any time be required.

59 Q. What do you refer to in your last answer, when you say, "the means necessary for ascertaining the precise extent of such encroachments are amply afforded by the maps and field book, should they at any time be required?"

A. I refer to the results of the various measurements as exhibited in the said map and field book.

60 Q. What results do you allude to in your last answer?

A. I am not aware that I can give a more explicit answer to the last question.

61 Q. Do your map and field book exhibit the distance of any building upon the line of the Champlain canal from the tow-path, or from the base line, or from the water's edge, or from the berm side, or from any other designated object?

A. I do not recollect that they do. Those measures were not deemed very important, although they were embraced in the general principle of the survey, in consequence of the other sufficient data which the survey affords for determining at any future day the outlines of the canal. It remains for those whose duty it is to sanction the surveys, to say whether it is necessary that the few instances in which it is possible to make references to buildings as above mentioned, shall still be exhibited in the survey.

62 Q. (By the counsel of Mr. Hutchinson,) Were you employed with the surveyors and astronomers in making examinations and surveys to establish the boundary line between the United States and Canada?

A. I was employed with the surveyors upon the northeastern boundary.

63 Q. Have you a commission as deputy surveyor of the State of Connecticut?

A. I have held such a commission about six years.

64 Q. (By the counsel of Mr. Trumbour.) Did you make any astronomical observations in surveying the Erie and Champlain canals?

A. I did not.

65 Q. Did you make your said surveys by chain and compass?

A. The measures along the base line were made with the chain and compass; the offsets were measured with a tape line.

66 Q. (By the committee.) Do you know of any other matter or thing relative to this investigation, material to the State, or to either of the memorialists; if yea, set forth the same at large, as particularly and fully as if you were thereunto specifically interrogated?

*April 27, 1832.*

Present—The Committee, the memorialists and their counsel.

A. In my reply to a previous interrogatory, I remarked that the plan of executing the canal surveys as sanctioned by the canal commissioners, was devised principally by myself, at the request of Mr. Hutchinson.



In the investigation of the subject, it became evident that there were two leading and distinct plans or methods, either of which might be adopted. In selecting from these two plans, a preference was given to the one which appeared to offer the most simple and certain means of determining the precise location of the boundaries of the canals, and which would at the same time be applicable to all the peculiar circumstances that could possibly arise in the course of the surveys, in order that the same uniform system might be adhered to upon all the canals belonging to the State.

This investigation resulted in giving to the plan adopted by Mr. Hutchinson, a decided preference. The other, which was rejected, corresponded in its general principles, and in its more important details, with that pursued by Mr. Trumbour.

The first of these plans contemplated the measurement of a base line along the inner edge of the towing path, which was considered the best defined, and most permanent part of the canal. From this line offsets were to be made in a specified manner at all places where a variation in the breadth of the canals should require. They were to extend on the one side across the towing path to the boundary of the State property on that side, and on the other, across the canal to the opposite boundary on the berm side.

In these measurements a reference was to be made to the most permanent objects situated along the line of the canals, such as locks, bridges, aqueducts, waste-weirs, culverts, buildings, &c.—The points of intersection likewise with the base line above mentioned, of all lines of counties, towns, patents, farms, lots, &c. together with the directions and bearings of the same, were to be particularly noted.

The results of these measurements were to be inserted in field books, arranged in a new and improved manner, and so clearly and fully illustrated by the aid of sketches or diagrams, as to present a very perfect map of the survey.

The other plan or method contemplated the measurement in the usual way, with the chain and circumferenter, of the outlines of the land occupied by the canals, with such references to permanent objects and cross measurements between the said lines as would fix, in the surest manner, their location. In this method likewise, as in the preceding, the lines of farms, lots, &c. intersecting the canals, together with the names of the different proprietors, were to be noted.

This method, as already stated, was rejected. The objections to it consisted, in the first place, in the extreme difficulty, not to say impossibility, of effecting the measurements of the outlines, in the manner mentioned, with any tolerable degree of certainty, in consequence of the inequalities of ground and the frequent obstructions from fences, thick brush, trees, stumps, rocks, precipices, swamps, canal basins, buildings, &c. and could not be applied, in very many places, where the base of the canal bank on one side was situated in the channel of an adjoining river.

It was, moreover, considered that in this method a reliance for accuracy in the measurements must necessarily be placed in a great measure upon the circumferenter, an instrument, the errors of which

are far greater and more numerous, and less under the control of the surveyor than those of the chain.

This method, likewise, would not allow of the results of the measurements being presented in the field book in so clear, concise and uniform a manner as the circumstances of the case and importance of the survey required.

In the plan adopted by Mr. Hutchinson all these difficulties were removed.

The several measurements were so ordered as to cause a principal reliance to be placed upon the chain instead of the circumference.

They were to be made, likewise, under circumstances much more favorable to accuracy, since the principal or base line was located along the inner edge of the level and even surface of the towing-path. This method would, moreover, enable the surveyor to preserve a more complete control over the different measurements, and afforded the means of exhibiting the results of these measurements in the field book, in the most clear, concise and satisfactory manner; and would enable him likewise to present a more correct general topographical view of the whole country, in the vicinity of the canals, than could be obtained by any other process.

The maps of the surveys thus made were to be constructed upon so comprehensive a scale that all the lines pertaining to the surveys, however minute, might be distinctly shewn, and afford ample space for inserting upon each their respective measures, and the whole to be finished in a style and manner corresponding with their importance, when considered as permanent records, to be deposited in the archives of the State for future reference.

The second of the methods mentioned was deemed objectionable in another respect, as it would require that the results of the different measurements upon any given portion of the canal should be exhibited in a detached and disconnected manner, either in different field-books or in different parts of the same field-book; a circumstance which would cause much inconvenience in the references to them, particularly if the plan of sketches or diagrams was not recognized, and add to the liabilities to error when compared with the other method.

It was moreover considered that the surveys, when completed, would be subject to examination upon the ground by the Canal Commissioners, and in the many instances where the judgment of those Commissioners would be found at variance with that of the surveyor, as to the location of the lines, or the amount of ground to be included, an alteration would be required in the measurements. In the second of the plans mentioned, these alterations could not be made, without breaking in upon and deranging the order and connection of the surveys, and causing confusion in the field-books.

In the method adopted by Mr. Hutchinson, no such derangement could possibly result, as the alterations would be effected by simply enlarging or diminishing the offsets to the extent required.\*

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\* The reason of this is, that the boundaries of the State property not being designated on the ground, an alteration of his map would not make any confusion in dimensions or boundaries.



The preceding constitute, it is believed, the leading and most material points of comparison in the two methods of survey, as they were originally presented. The opinion which I then formed as to their general merits not only remains unchanged, but has received additional confirmation from my subsequent experience derived in making the surveys, and I have no hesitation in saying that the interests of the people of the State will be greatly prejudiced should the plan of survey, as adopted by Mr. Hutchinson, and sanctioned by the Canal Commissioners, not be extended to all the canals in the State.

Present the Committee.—*April 28th, 1832.*

[At this stage of the investigation, Mr. Hutchinson, upon the call of Mr. Trumbour's counsel, produced a note and receipt before the committee, of which the following are true copies:]

*" Utica, Aug. 12, 1829.*

*" \$250.*

*" Received of Henry Seymour two hundred and fifty dollars, which I promise to repay to him or his order.*

*" JACOB TRUMBOUR.*

*(Endorsed.) " J. Trumbour, \$250.*

*" Pay Holmes Hutchinson,*

*" H. SEYMOUR.*

*" Sept. 14, 1829."*

*" Received of Henry Seymour, Canal Commissioner, two hundred and fifty dollars, to account to him or order, on demand.*

*" JACOB TRUMBOUR.*

*" Utica, Oct. 14, 1829.*

*(Endorsed,) " Pay Holmes Hutchinson.*

*" HENRY SEYMOUR."*

67 Q. (By the counsel of Mr. Trumbour.) Look at the paper in the words and figures following :

*" Received of Henry Seymour, Canal Commissioner, two hundred and fifty dollars, to account to him or order, on demand.*

*" JACOB TRUMBOUR.*

*" Utica, Oct. 14th, 1829.*

*(Endorsed,) " J. Trumbour, \$250.*

*" Pay Holmes Hutchinson.*

*" HENRY SEYMOUR."*

and declare in whose hand writing is the body of the face of that paper.?

A. It resembles Mr. Hutchinson's.

68 Q. Do you believe that it is Mr. Hutchinson's hand writing?

A. I think I should pronounce it to be his.

69 Q. At what time was the survey of the boundaries between the United States and Canada, spoken of in your former deposition, performed?

A. Between the years 1817 and 1822.

70 Q. What part of that time did you assist?

[A. No. 335.]

A. During the year 1818, and winters of 1819 and 1821.

71 Q. In what capacity did you assist?

A. As an assistant surveyor and draftsman.

72 Q. Who was your principal?

A. My father was the principal surveyor during the period first mentioned.

73 Q. Who had the general superintendence of the work?

A. The Commissioners gave the instructions. Different portions of the work were executed by different surveyors.

74 Q. Do you or do you not know that Mr. Hassler, now or late professor of mathematics in Union college, had the general superintendence of that work?

A. Mr. Hassler's duties were, I believe, confined to locating the latitude line, as it was called, and may have embraced the portion of the boundary along the St. Lawrence, and through the lakes.

75 Q. Look at the farm of Andrew Law, upon the second sheet of your Atlas No. one, and state how you would describe the lands taken out of the farm for the use of the canal in making a deed or release of the same, according to your survey of the canal?

A. I would refer to the survey as exhibited upon the map in the canal office, or wherever deposited. That I should think would be sufficient for the purpose of conveyance. If the courses and distances of the outlines are required, they may be obtained by calculation.

76 Q. Could you by your said survey describe the said lands by any permanent objects or visible boundaries, or by courses and distances, without a further survey or calculation?

A. I could not give the courses and distances of the outlines without further calculation. I think I could describe them by permanent objects or visible boundaries, viz: by a reference to a bridge which stands upon one line of the lot—by the offsets which are given from each angle of the outlines to the inner edge of the towing-path, and by a building which stands on the berm side.

77 Q. Will you now state how you would describe the boundaries of the said lands by those permanent and visible objects, as your map and survey now exist, in drawing a deed of release, and give the words in which you would describe it?

Present the Committee—May 2d, 1832.

A. I would commence the description at the point where the north line of Mr. Law's land intersects the inner edge of the towing-path of the canal; from thence I would pass around upon the outlines, giving the course and distance of each line in succession, as found by calculation, noting the distance from each station from the inner edge of the towing-path, as exhibited by the offsets from the base line. The words of the description I could not give without making the necessary calculations.

78 Q. (By the counsel of Mr. Hutchinson.) Will you look at Atlas No. 1, page second, on the farm designated as belonging to

**Andrew Law**, and explain to the committee how you would ascertain the exterior bounds of the canal upon the ground?

**A.** The nearest permanent object it will be seen by the map, is the bridge mentioned above as standing across the canal on the south line of said Law's farm. By commencing at the point where the line joining the north corners of the two abutments of this bridge intersects the inner edge of the towing path, and measuring along the inner edge of the towing path, the several points or stations of the same situated within the limits of said Law's farm may be found. The offsets from these points or stations being measured in the manner specified upon the map, the angles or stations of the out-bounds are determined, as required.

**79 Q.** Suppose the courses and distances of the outlines to be calculated as you say they may be from the other measurements, would they be of any service in ascertaining the position of those outlines hereafter?

**A.** I should think they would not. As the preference would be given to the measures along the base line and the offsets therefrom.

**80 Q.** (By the counsel of Mr. Trumbour.) Suppose Mr. Law, wishing to ascertain the lines of his farm and the lands taken out of it for the use of the canal, should apply to you for instructions to a surveyor to enable him to make the survey correctly on the ground, how would you do it? Give the precise words.

**A.** I would refer the surveyor to the field book and maps, or otherwise I would provide him with a rough sketch or transcript from the map containing the necessary measurements and descriptions.

**81 Q.** Is it not more certain and definite in regard to the rights of individuals and the public to run the outlines and give the number of feet and inches of each building being private property that comes within the bounds of the canal, than to be dependent on your base line and offsets to ascertain hereafter how much the building or buildings of any individual stand within the outlines of the canal?

**A.** The instances of buildings thus situated do not occur often enough to render them of any great service as a general reliance in the measurements. It is probable moreover, that buildings so situated will be removed from off the public ground, and hence any reference to them in the manner mentioned in the question could not I think be as much relied upon as the measurements from the base line.

**82 Q.** Suppose a private building now standing as it stood when you surveyed, encroaches upon the State land, and the owner is required to move it off from the State land, can you ascertain from your map and field book as they now exist without further measurement or calculation, how many feet and inches of such building stand within the State property?

**A.** I do not recollect that I can. In some instances in making the survey, I designated by marks upon the buildings the extent of such encroachments.

**83 Q.** Did you in making your survey take the courses of your offsets upon the ground from the base line of the several angles of the alignment with the compass?

A. I did not in all cases. None were however omitted which would affect the accuracy of the survey.

Present the Committee.—*May 4th, 1832.*

84 Q. What persons had you in assisting you in surveying the canals?

A. All I can at present recollect are eight in number, viz: Rugene Webster, Silas Hutchinson, Walker, Loomis, George Loomis, Washburn, Kittrick and Buel.

85 Q. How many persons besides yourself were actually employed in making the said survey at the same time?

A. Usually about six, viz: two chainmen, one flagman, two axemen and a boatman.

86 Q. Who passed along the berm side to regulate the stations there?

A. The duty was not performed by the same person throughout. Loomis, Washburn, and I believe Hutchinson and Kittrick, were at times engaged in that duty.

87 Q. What time did you finish surveying the Champlain canal?

A. Between the middle and latter part of August in 1830.

88 Q. At what time did you quit surveying in the fall of 1829, and at what time did you begin again in the spring of 1830?

A. I quit in the fall about the last of November, and commenced about the first of May following.

89 Q. Did you finish the whole of the Erie canal before you began the Champlain?

A. I finished that portion which I surveyed.

90 Q. Was there any other surveyor employed on that part of the canal which you surveyed?

A. There was not.

Present the committee.—*May 11th, 1832.*

*Further examination of the same witness.*

By the counsel of Mr. Hutchinson.

91 Q. How far did the locating of the stations in the outlines of the State property on the berm and other side of the canal, come under your personal observation in making the survey of the Champlain canal?

A. The measurements were all made under my immediate direction and observation.

92 Q. Were there not more persons than one to note down the measurements with the chain to insure accuracy?

A. The count was kept by both chainmen, and the manner in which the field minutes were kept, rendered it necessary that my own attention should constantly be directed to the measures with the chain.

93 Q. Has the acting Canal Commissioner passed along the line of the Champlain canal since the completion of the survey, and did

be not in many places direct alterations, in the amount of land included in the survey?

A. Yes.

94 Q. Do the field books and map now before the committee exhibit the survey as corrected by the Commissioner?

A. They contain all the corrections that were suggested on that examination of the canal.

95 Q. (By the counsel of Mr. Trumbour.) Did you take the observations upon the exterior bounds of the State property by which to determine the extreme points of your offsets? and if so, did you take those observations standing upon the towing-path, or did you pass to the exterior bounds from side to side for that purpose?

A. The observations were taken by me in both of the ways mentioned.

96 Q. What proportion of them were taken by you, being at that time at the exterior bounds?

A. I am not able to say.

97 Q. Were one-fourth part of them so taken?

A. I am not able to say whether they were or not.

98 Q. Did you set stakes or other monuments at all the extreme points of your survey, and if not at all, what proportion of them as near as you can state?

A. In the majority of cases, stakes or other monuments were not set at the extremes of the offsets, for the reason that they could be of little or no use for the purposes of reference hereafter.

99 Q. Were stakes or monuments so set in as many as one-fourth part of such extreme points, according to your recollection and best judgment?

A. I should think they were not; but am not able to speak certainly.

100 Q. Did you bisect one-fourth of the angles of your base line with the compass on the ground?

A. The angles were so bisected in all cases where stakes were set at the extremes of the offsets.

101 Q. Was that so done in any cases except at basins, ponds and other places where you found it necessary to survey around the exterior bounds, and if so, in what other places?

A. It was, but am not able to name the places.

102 Q. Have you any other maps, books or documents under your power or control, relating to the lands of the State along the lines of the canals, except those made by you appertaining to the survey which is now the subject of controversy, other than such as you now produce before the committee, and such as were referred to and described by you in your former deposition?

A. I have not to my knowledge.

103 Q. Do the books, maps or documents now produced by you contain a description of the bounds of the State property?

A. They do not, with the exception of the document from the Comptroller's office, marked, In Committee, Exhibit K. 11th May, 1832.

EDWIN F. JOHNSON.

Taken and sworn, &c. }  
in Committee. }

J. HAMMOND, *Chairman.*

(No. 7.)

*Lucas Elmendorf's Deposition.*

IN COMMITTEE—Present, Mr. HAMMOND,  
Mr. M'DONALD,  
Mr. HOGEBGOM.

*Lucas Elmendorf*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows :

1 Q. Where do you reside, and how long have you been acquainted with Jacob Trumpbour ?

A. I reside at Kingston, Ulster county ; I have been acquainted with Judge Trumpbour as much as forty years, I should think.

2 Q. What are his reputation and standing as a surveyor ?

A. I think as good as those of any person. His principal time has been occupied in that branch of business since my first acquaintance with him.

3 Q. Will you please to look at the letter addressed by Jacob Trumpbour to the Canal Commissioners, under date of 28th March, 1829, as printed in his memorial, commencing on page 15, and state by whom, or at whose suggestion the words, " in consequence of a received impression," were inserted in said letter ? Declare the facts relative thereto fully.

A. I happened to be lodging in the same house with Jacob Trumpbour, on the 28th of March, 1829, in the city of Albany. I was the year before perfectly acquainted with the fact, that he had made application to the Canal Commissioners to become the surveyor of the canals, and I was consulted by him as a friend, relative to his making such first application ; at the time it was made, it was understood that the Canal Commissioners required the proposition to be made for surveying the canals, conformable to the act of the Legislature, and for a definite or specific amount of compensation. I did not receive this information from the Canal Commissioners, but it was then understood that such was the nature of the proposition which they required ; and I think I assisted or advised Mr. Trumpbour in framing his proposition, so as to conform to it. On the 28th March, 1829, a letter was prepared by Jacob Trumpbour, for the purpose of sending to the Canal Commissioners. That letter was submitted to myself and General Fuller, and at our suggestion certain words were struck out, and the words, " in consequence of a received impression," inserted.

4 Q. Do you recollect the words struck out of said letter at your suggestion, or the substance of them? If you do, declare?

A. I do not recollect the words, but the substance of them seemed to assert, in rather too positive a manner, his right to make another proposition, on the ground that the Commissioners had received a conditional proposition from Mr. Hutchinson. Whereas, at the time he made his first proposition, he understood the Canal Commissioners as requiring the proposal to be unconditional. I judged it would be more courteous, and perhaps have a better effect, to couch the letter in milder terms.

5 Q. (By the Committee.) Do you know any other matter or thing material to the interest of the State, or either of the memorialists? If yea, declare the same fully.

A. I do not.

LUCAS ELMENDORF.

Sworn the 26th April, 1832, }  
before me, }  
J. HAMMOND, *Chairman*.

(No. 8.)

*William K. Fuller's Deposition.*

Present, the Committee.

*William K. Fuller*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Were you present at the time and transaction relative to the letter of the 28th March, 1829, spoken of by Lucas Elmendorf, in his deposition taken in this matter?

A. I was present.

2 Q. Were you present at his examination before this committee, and did you hear his statement on that examination?

A. I did.

3 Q. Is his statement, as set out in his deposition, correct and true, according to your knowledge and recollection?

A. It is correct so far as it relates to the alteration of the letter by our advice, and the reasons for so doing; so far as it relates to Mr. Elmendorf's previous information I am not informed.

4 Q. (By the Committee.) Do you know any other matter or thing material to the interest of the State, or either of the memorialists? If yea, declare the same fully and particularly, as if you were thereunto specifically interrogated.

A. I do not recollect any thing material.

W. K. FULLER.

Sworn the 26th April, }  
1832, before me, }  
J. HAMMOND, *Chairman*.



(No. 9.)

*William C. Trumbour's Deposition.*

IN COMMITTEE—Present as before.

*William C. Trumbour*, a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows :

1 Q. Were you engaged in assisting your father, Jacob Trumbour, in surveying the canals in 1829 and 1830?

A. I was.

2 Q. What duty did you there perform?

A. I was a chain bearer.

3 Q. Did you assist throughout the whole survey of the Cayuga and Seneca and the Oswego canals, and that part of the Erie canal west of Canastota?

A. I did.

4 Q. Where did you commence said survey, and at what time?

A. We commenced at Port-Byron on the 24th of June, 1829.

5 Q. Was your father taken ill soon after he commenced said survey?

A. He was.

6 Q. How much of said survey had he made before he was so taken ill?

A. About eight miles.

7 Q. At what place or places?

A. From Port-Byron to Montezuma lock, and from Port-Byron to Centerville.

8 Q. How long did your father remain ill, and at what time did he recommence the survey after his recovery?

A. He remained ill from the 7th of July until the 25th August, on which latter day he recommenced his survey.

9 Q. Before his illness did Henry Seymour, acting Canal Commissioner, come to the place where he was surveying the canal?

A. He did.

10 Q. At what particular place and time did he so come?

A. At the junction at Montezuma, on the 26th of June, 1829.

11 Q. On which side of the canal was your father, and what was he doing when Mr. Seymour so came to him?

A. He was on the berm side, writing in his field book.

12 Q. Did your father do any thing appertaining to the survey while Mr. Seymour was present; and if he did, what was it?

A. He did; he put a stake where the compass stood, and took a check line course and distance across the Erie canal to the station, and noted the same in his field book.

13 Q. Did he enter into conversation with Mr. Seymour at that time in relation to the said survey?

A. He did.

14 Q. Do you recollect that conversation, or the substance of it? If you do, relate what passed relative thereto.

A. I do. My father stated to him the manner in which he was surveying the canal, and Mr. Seymour expressed himself satisfied with it. My father pointed to a building on the towing-path side,



and stated to him how much of that building he had taken in, and told him there would be difficulty about the buildings on the berm side near the collector's office at Montezuma. My father asked him for advice ; how much he must take in where those buildings were ? Mr. Seymour said the way my father did it he was satisfied with, only be sure to take in enough. My father and Mr. Seymour went on board my father's boat. It was the boat Myron Holley, used for convenience in surveying the canals.

15 Q. How much of the survey did your father complete that season, and what time did he quit ?

A. He completed about 100 miles, finished the Cayuga and Seneca, and also from Canton to Rochester on the Erie canal ; he quit the 11th of November, at Rochester.

16 Q. Did Mr. Hutchinson come to your father upon the canal, at any time in the summer of 1829 ? And if so, at what time and place.

A. He did, at Port Byron, in the month of August.

17 Q. Was it before or after your father recommenced surveying after his aforesaid illness ?

A. It was before.

18 Q. Did you at that time hear any conversation between your father and said Holmes Hutchinson, on the subject of the survey of the canals ; and if yea, what was that conversation ?

A. I did hear such a conversation between them ; my father explained to him his manner of surveying the canals ; he drew a sketch upon paper to show the manner and with that explained to him that he run a line on both sides of the canal ; he also stated to Mr. Hutchinson whenever he came to buildings encroaching upon the line of the canal, he noted them, and marked the number of feet they stood on the line he run. He explained to him how much he took on the tow path side, and also on the berm side, and stated to him that he took a check line across the canal to the station opposite, as often as convenient, so as not to let one survey run ahead of the other, to keep the survey in check on both sides, to prevent mistakes. He also stated that he took an observation to a more permanent object than the stake itself, as often as he found such an object sufficiently near to the line, and noted the course and distance of those objects in his field book.

19 Q. Did Mr. Hutchinson make any objections to said survey as explained to him ?

A. He did not.

20 Q. Did Mr. Hutchinson at that time suggest any other method of survey ?

A. He did not.

21 Q. Did your father pursue the same uniform method throughout his whole survey, of all the canals by him surveyed ?

A. He did.

22 Q. At what time did your father finish the survey of said canals ?

A. I think it was in August 1830, the field book will tell.

[A. No. 335]

*Cross examination by the Counsel of Mr. Hutchinson.*

23 Q. What is your age?

A. Twenty years.

24 Q. Did you act in any other capacity than chain bearer in making the surveys?

A. I did not.

25. Q. Did you use the compass, or perform any other work?

A. I did not.

26 Q. How much of the said survey was made before Mr. Hutchinson called upon your father at Port-Byron?

A. When he called there in the month of August, 1829, there was about 8 miles surveyed.

27 Q. Was this survey made on both sides of the canal at the time stated in your last answer?

A. It was.

28 Q. Who carried the compass during the said survey of 8 miles?

A. My father.

29 Q. How many persons used the compass in the surveys of the canals made by your father, and what are their names?

A. They were my father, Mr. John W. Sawyer, and Mr. Benjamin Overbagh; there were no other persons used the compass to survey the canals with.

30 Q. How much of the distance did your father carry the compass?

A. The whole distance on the tow-path side from Buffalo to Canastota, and the whole of the Seneca and Cayuga canal, and the Oswego canal.

31 Q. What do you mean by a check line? And point out the same in the field-book.

A. I mean by a check line, to take the course and distance from a station on one side of the canal, to the station upon the other side across the canal.

He points out the following on the field notes: "From St. 14, across Erie canal, to St. 75, 118 feet."

32 Q. How was this measurement made?

A. By taking the course with the compass, and with a tape line.

33 Q. Did you hear all the conversation that passed at Port Byron, between your father and Mr. Hutchinson, relative to the survey?

A. I heard all that took place while they were on board the boat at that place.

34 Q. Did you not hear Mr. Hutchinson suggest the propriety of making the survey on a different plan, by running but one side?

A. I did not.

35 Q. Was not your father and Mr. Hutchinson in conversation on the south side of the canal, and not on board of the boat, at the time mentioned in the question before the last?

A. There was no conversation between them in relation to the survey on the south side of the canal, that I know of.

36 Q. Was there any other conversation relative to the surveys, between your father and Mr. Hutchinson?

A. There was not, that I ever heard.

37 Q. Were your father and Mr. Hutchinson at Port Byron, shortly before or after the conversation you have mentioned as having taken place on board the canal boat?

A. Not to my knowledge before this conversation on board the boat. I know that they had none shortly after, because I went with them to the tavern, where Mr. Hutchinson got his horse and went off.

38 Q. Where did your father and Mr. Hutchinson first meet each other, on the day the conversation took place on board of the canal boat?

A. At Reed's tavern, about twenty rods from where the boat was.

39 Q. Were you present when they met?

A. I was not.

40 Q. How long after they met, was it before the conversation took place between them, which you heard on board of the canal boat?

A. I can't exactly state the time: It was long enough for them to walk from the tavern to the canal boat; perhaps two or three minutes.

41 Q. How long after they came on board the boat, was it before this conversation commenced?

A. As soon as they took their seats, and they took those as soon as they came on board.

42 Q. Did you see your father and Mr. Hutchinson when they met at Reed's tavern?

A. I did not.

43 Q. By what circumstances did you ascertain that they met there, and came immediately down to the boat?

A. I was in bed in the morning. A person came to the boat, and asked the cook if Mr. Trumpbour was aboard. The cook said he was not; he was up to Mrs. Tremper's. He asked the cook (who was at the cabin door where I was laying,) if he could go and ask Mr. Trumpbour to come down; that Mr. Hutchinson wanted to see him. The cook went. The next I saw or heard, my father and Mr. Hutchinson came on board together, a few minutes after. I should judge the distance from the boat to Mrs. Tremper's was something less than a quarter of a mile.

*Friday morning, 27th April, 1832.*

The committee met, &c.

44 Q. Will you give the minutes of another of the check lines above mentioned, in the aforesaid field-notes?

A. "N. 67° 30' W. across canal to St. 1, 8 feet canal, canal 51 feet; 105 feet whole distance to St. 1."

45 Q. Will you give one more instance of a check line?

A. "From St. 16, S. 16 W. across canal, W. side feeder, Cold spring, to St. marked 1 on W. side feeder, St. being past, at 8 feet from canal, 35 feet canal and 51 feet across canal to St. making together 86 feet in the whole, leaving 43 feet for canal."

46 Q. Can you ascertain from said field-notes, at what particular place on the canal the last mentioned check line was taken?

A. I can. It is at Centerport; the field-notes specify that it was the first check line taken. The survey began at Port Byron. According to my recollection, Port Byron is from 1 to 2 miles from Centerport.

47 Q. According to said field-notes, was there a check line taken at Port Byron?

A. There was. We began at Port Byron, and run down the tow-path side to Centerport, and then took a check line, and then run back on the berm side to Port Byron, and there took another check line.

48 Q. Are the field-notes you refer to, those taken on the ground?

A. They are.

49 Q. Do you recollect whether, at every angle of the outlines of said survey, the distance from the station to the canal was taken, or whether such was the general practice?

A. I do. It was taken at every angle throughout the whole of the survey, on both sides of the canal, where I carried the chain; which was all the way, on the tow-path side and on the berm side, from Montezuma to Centreport.

50 Q. Were the field-notes last referred to, made by your father?

A. They were.

51 Q. Is the whole survey, or the survey of both sides of the canal, on the same page of the field-notes, at the place pointed out at Port Byron? If so, point it out.

A. They are not on the same page. The field-notes were made as the survey progressed. Where we crossed the canal at any point, the fact was noted; and the notes of the survey were continued in like manner on the other side of the canal.

52 Q. How much of the berm side did your father survey?

A. The Seneca and Cayuga; from Lock pit to Canton on the Erie canal, on the berm side and tow-path both.

53 Q. In surveying from one station to another, will not the field-notes be on different pages?

A. It may so happen.

54 Q. What is the distance from Montezuma to Port Byron?

A. I should say about five miles: It may be more, and may be less.

55 Q. How many times were check lines taken between the last named places?

[This question is objected to, on the ground that it does not specify whether he is required to answer according to his recollection, or according to the field-notes.

The committee think such a specification unnecessary.]

A. There was one taken at Port Byron and at Montezuma, and one at the lock between Port Byron and Montezuma.

56 Q. How far is the lock last mentioned, at which the check line was taken, from Port Byron?

A. I do not know.

57 Q. Have you any recollection whether the distance last inquired about, is or is not less than one mile?

A. It is more than one mile.

58 Q. Is it not more than two miles?

A. I presume it is.

59 Q. Is it not three miles?

A. I cannot tell.

60 Q. In surveying the two sides of any portion of the canals, were not the field notes put down frequently in different books?

A. They were wrote down on the books as we went along; and as the pages were filled, we turned over a new leaf. Each surveyor kept his own book, and entered his minutes or notes in it.

61 Q. Were not surveys made of opposite sides of the same portion of the canals at the same time, by different surveyors?

A. There were.

62 Q. When that was the case, did they enter their field notes in the same or in different books?

A. Each surveyor entered his own field notes in his own book.

63 Q. What portion of the canals were surveyed by two different surveyors at the same time?

A. From Lock pit to Buffalo, and from Canton to Canastota, and that part of the Oswego canal wherever there was a berm side.

64 Q. Will you look at the field notes, and then state how many check lines appear to have been taken from Port-Byron to Montezuma, inclusive?

A. One at Port-Byron, one at Montezuma lock, one at the junction, one at the collector's office near the junction, one at station 14, one at station 25, one at station 52, one at station 65, one at lock No. 7, nine in the whole; those are the check lines between Montezuma and Port-Byron inclusive.

65 Q. How do you know that check lines were taken at the places you have stated in your last answer; is it from your knowledge, drawn from an inspection of the entries in the field notes, or from a hand in pencil marks, set opposite some of the entries by your father?

A. I know it, because I helped to take the check lines myself.

66 Q. What assistance did you derive from said pencil marks?

A. My attention was directed to the minutes by them, and it saved me time in looking over.

67 Q. Could you have found all the places you have mentioned where check lines are noted, without this assistance?

A. I could.

68 Q. (By the committee.) Do you know any other thing material to the State, or to either of the memorialists, if yea, declare the same?

A. I do not know that I do.

IN COMMITTEE—17th May, 1832, P. M.

Present—Mr. McDONALD,  
Mr. HOGEBROOM,  
Mr. HAMMOND, *Chairman*.

The memorialists and their counsel, Mr. Viele and Mr. Cheever.

*William C. Trumpbour*, a witness, sworn, and further examined on the part of Jacob Trumpbour, deposes and says :

69 Q. Are the items on the first and second pages of the account of Jacob Trumpbour presented to the committee, and marked Exhibit N. and hereunto annexed, so far as they state the persons employed by him in the survey of the canals, and the length of the time by each, correct?

A. They are.

70 Q. Are the sums there charged for services reasonable, and are there vouchers for any, and which of them?

A. They are in my opinion reasonable. There are vouchers for charges numbers 1, 3, 5, 7, 9, 11, 13, 19, 21, 23, 25, 27, 35.

71 Q. Were Jacob Trumpbour, John W. Sawyer and Benjamin Overbagh, employed the length of time stated in items numbers 20, 36 and 37?

A. They were.

72 Q. Were Jonathan D. Dubois, William C. Trumpbour, John W. Wigram and Matthew Jansen, in the service of Jacob Trumpbour, and were they engaged in the survey as hands, the length of time respectively stated in items numbers 15, 29, 31, 33?

A. They were.

73 Q. What length of time did Jacob Trumpbour spend in Albany prosecuting his claim before the Legislature in the sessions of 1831 and 1832?

A. In all, seven months.

74 Q. Did Jacob Trumpbour, to your knowledge, in June 1831, make a journey to Schoharie and Onondaga, for the purpose of settling his claim with the Canal Commissioners, William C. Bouck and Jonas Earll, jun.

A. He did.

#### EXHIBIT N.

In Committee of the Assembly—17th May, 1832.

[The memorialist, Jacob Trumpbour, presents the following as a bill of the items of his labor, expenses and disbursements, incurred in the survey of canals belonging to the State.]

*Hands employed in 1829.*

1 John M. Slater, 1 month, at \$12 per month,.....	\$12 00
2 1 month board at 50 cents per day, .....	15 00
3 James Dennis 5 days, .....	2 50
4 5 days' board, .....	2 50
5 Nathaniel Mandigo 2 months 12 days, .....	33 50

6	2 months' 12 days' board,.....	\$86 00
7	John Richardson 2½ months,.....	18 00
8	2½ months' board,.....	37 50
9	Elijah Buek 2 months 7 days, .....	27 50
10	2 months' 6 days' board,.....	33 00
11	Jacob E. Tremper 1 month 4 days, .....	14 00
12	1 month 4 days' board, .....	17 00
13	William C. Tremper, 2 months 10 days,.....	29 00
14	2 months' 10 days' board, .....	35 00
15	William C. Trumbour, 4 months, including going and returning from Kingston, and making preparations for the survey, &c. ....	48 00
16	4 months' board, including expenses from Kingston and returning,.....	80 00
17	Jonathan D. Dubois 4 months, including going and returning from Kingston, &c. ....	48 00
18	4 months' board, including expenses from Kingston and returning, .....	80 00
10	5 months boat hire, Myron Holley,.....	75 00
20	5 months in all, Jacob Trumbour and John W. Sawyer, employed in surveying the canals, including going and returning from Kingston, making preparations for the survey, travelling expenses, board, horse hire and provender, at \$5 per day,.....	750 00

*Hands employed in 1830.*

21	Charles H. Daniels 2 months 10 days, at \$12 per month,	29 00
22	2 months' 10 days' board, at 50 cents per day, .....	34 00
23	Levi P. Graham 2 months 10 days, .....	29 00
24	2 months' and 10 days' board, .....	34 00
25	James Wells 2½ months,.....	30 00
26	2½ months' board, .....	37 50
27	William Mower 3 months,.....	36 00
28	3 months' board, and expenses from Kingston and returning,.....	57 50
29	William C. Trumbour 3 months, including going and returning from Kingston to Buffalo,.....	36 00
30	3 months' board, including expenses from Kingston and returning,.....	57 50
31	John W. Wigram 3 months, including going and returning from Kingston to Buffalo, .....	36 00
32	3 months' board, including expenses from Kingston and returning, .....	57 50
33	Mathew Jansen 3 months, including going and returning from Kingston to Buffalo, .....	36 00
34	3 months board, including expenses from Kingston and returning,.....	57 50
35	2½ months' boat hire, Myron Holley,.....	37 50
36	3 months Jacob Trumbour and Benjamin Overbagh, employed in surveying the canals, including going and returning from Kingston, making preparations for	



the survey, travelling expenses, board, horse hire and provender, each at \$5 per day, .....	900 00
37 4 months Benjamin Overbagh, employed in protracting, mapping and preparing the returns of survey, for the examination of the Canal Commissioners, to enable the memorialist to make fair maps and field books, including board and stationary, &c. at \$5 per day,...	600 00
Probable expenses in the examination of the survey on the ground with the Canal Commissioners or such agents, as the State may appoint, .....	500 00
Probable expenses of making the fair maps and atlas, descriptions of boundaries and field books, to be filed in the Comptroller's office, including stationary, &c....	1300 00

The memorialist considers himself entitled to a full remuneration from the State for his expenses and disbursements, by reason of the Canal Commissioners refusing to fulfil their contract with him in relation to the survey of the canals.

After the memorialist finished his survey in August, 1830, he informed the Canal Commissioners thereof, to the end that they might examine the same, &c. to enable him to go on and complete his returns, which they refused or neglected to do, and all the memorialist's arrangements for prosecuting the business to a termination being thereby frustrated, he sustained damages consequent therein to the amount of ..... \$300

The memorialist's time spent in efforts to obtain a settlement of his claim by the Legislature, in 1831 and 1832, in the whole 7 months, at \$3 per day, ..... 630

The memorialist's expenses for travel and time in calling on the Canal Commissioners in June, 1831, and for 7 months board while at Albany, ..... 200

Disbursements to his counsel upon the investigation of his claims, ..... 500

Interest upon sums after the time when they should have been respectively paid, .....

The memorialist, Jacob Trumbour, has received two sums of \$250 each, as appears by his note and receipt given to Henry Seymour, and proved to be now in the possession of Holmes Hutchinson, which he is willing should be deducted from his account due him from the State, on his being indemnified against the said note and receipt.

IN COMMITTEE—Monday, 21st May, 1832.

Present—Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND, *Ch'n.*

The memorialists and their counsel, Mr. Viele, and Mr. Cheever, and Mr. Livingston.

*William C. Trumbour*, a witness sworn on the part of Jacob Trumbour, further examined on his part.

75 Q. How many miles of the canal had been surveyed by Jacob Trumbour and his assistants, on both sides, on the 14th October, 1829?



A. About fifty miles of the canal had at that time been surveyed by him on both sides. The whole of the Cayuga and Seneca canal, and on the Erie from Canton to Lockpit, had at that time been surveyed.

*Cross-Examined on the part of Mr. Hutchinson.*

76 Q. How many miles of the Erie canal had Mr. Trumpbour surveyed when he left for Kingston in 1829.

A. About thirty.

77 Q. At what time in 1829 did Mr. Trumpbour leave the survey of the canal for Kingston?

A. About the first of October, after having made the surveys aforesaid, he returned, and he commenced again on the nineteenth of October, and left off on the 11th of November at Rochester.

78 Q. What parts of the Erie canal had been surveyed by Mr. Trumpbour on the 1st October, 1829?

A. From Canton to Lockpit on both sides.

79 Q. Was the Cayuga and Seneca canal surveyed on both sides throughout its extent?

A. It was, so far as the canal was dug, and along the river on one side.

80 Q. How far was the said canal dug?

A. I cannot tell.

81 Q. How many miles along the river did you survey?

A. I cannot tell.

WILLIAM C. TRUMBOUR.

Taken and sworn in committee }  
the 22d May, 1832.

J. HAMMOND, *Chairman.*

(No. 10.)

*William C. Tremper's Deposition.*

Present—The Committee, the Memorialists and their Counsel.

*William C. Tremper*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Where do you reside, and what is your age?

A. I reside at Port-Byron. My age is 24 years.

2 Q. Did you assist Jacob Trumpbour in making the survey of the canals in 1829?

A. I did.

3 Q. What time did you begin and where; and how long were you with him?

A. I commenced on the 24th of June at Port-Byron, and was with him until he quit in the fall.

4 Q. What duty did you perform in making said survey?

A. Sometimes chairman and sometimes axeman.

5 Q. Do you recollect that Jacob Trumpbour was taken ill during that summer; and if so, at what time?

[A. No. 335.]

A. He was taken ill in July I think. I do not recollect the day of the month.

6 Q. Do you recollect how much and what part of said survey he had performed before he was so taken ill?

A. About eight miles I believe; from Centerville to the Seneca river.

7 Q. Did Henry Seymour come to you at any time when you was assisting in making that part of the survey last mentioned?

A. He did.

8 Q. At what place did he so come?

A. At the junction at Montezuma.

9 Q. Do you recollect what was done appertaining to the said survey while Mr. Seymour was there present?

A. I do. There was a check line taken across the canal from one station to the other.

10 Q. Was Jacob Trumpbour at that time present at that place engaged in the said survey?

A. He was.

11 Q. Did you hear any conversation between the said Trumpbour and Seymour at that time relative to the surveys of the canal; and if so, what was it?

A. I did. All the conversation I heard between them was, Mr. Trumpbour explained to Mr. Seymour the manner he surveyed. He pointed out on the tow-path side a house he had taken in, or part of it, in the line of the canal, and also some buildings on the berm side which came in part within the line of the canal. I heard no conversation other than that relating to the canal survey that I recollect.

12 Q. Did Mr. Seymour make any objections to the manner of the survey, as Mr. Trumpbour explained it to him?

A. He did not, that I recollect.

13 Q. Did Mr. Seymour suggest any other method of survey?

A. I don't recollect of any.

14 Q. Was you at any time present, while you were so engaged in said survey, when Mr. Holmes Hutchinson came to Mr. Trumpbour on the canal at or near Port-Byron?

A. I was.

15 Q. Was that before or after the illness of Mr. Trumpbour by you above referred to?

A. It was after his illness.

16 Q. Was it before or after he recommenced his survey after his illness?

A. It was before.

17 Q. Did you at that time hear any conversation between said Trumpbour and Hutchinson relative to the survey of the canals, and if so, where did it take place, and what was it?

A. I did hear such a conversation on board the boat of Jacob Trumpbour, the particulars of which I do not recollect, but it was about the survey of the canals.

18 Q. Was the subject of that conversation an explanation on the part of Mr. Trumpbour of his manner of surveying the canals?

A. It was.

19 Q. Did Judge Trumbour make or present a sketch upon paper to Mr. Hutchinson while so explaining his survey to him?

A. It is my impression he did.

20 Q. Where did you see Mr. Hutchinson first on that day, and at what time of day?

A. I saw him first on board of the boat, just as he came on board, of the morning early, sometime before breakfast.

21 Q. How long after he came on board was it before the conversation referred to commenced?

A. It was shortly after he came on board.

22 Q. Did you hear Mr. Hutchinson make any objections to the plan of survey as explained to him by Jacob Trumbour?

A. I do not recollect that he did.

23 Q. Did he suggest any other plan?

A. Not to my recollection.

24 Q. (By the counsel for Holmes Hutchinson.) Tell us all that passed to your knowledge in that conversation?

A. I don't know as I can tell any thing more particular about it than I have stated.

25 Q. State in connection the conversation that passed at the time last referred to between Mr. Hutchinson and Judge Trumbour?

A. I cannot tell the particulars of the conversation any further than I have done.

26 Q. What was that conversation about, and what took place during the same?

A. The conversation was about the survey of the canals, and as I stated, it is my impression that Mr. Trumbour explained to him, on a piece of paper, the manner of his doing it.

27 Q. Did any thing else take place during that conversation to your knowledge?

A. There did not, to my knowledge.

28 Q. Did you hear it said in that conversation that any other surveyor was to be employed, or any thing in relation thereto?

A. I did not.

29 Q. Have you disclosed all the knowledge you have of what passed at the said conversation?

A. I have.

30 Q. How long did the said conversation continue?

A. It was a short time—perhaps ten or twenty minutes, or half an hour.

31 Q. Was there, about the time of said conversation, any conversation between Mr. Hutchinson and Mr. Trumbour that you did not hear?

A. None that I know of.

32. Where was William C. Trumbour during this conversation?

A. He was on board the boat.

33 Q. Was the said William C. Trumbour then in a situation to hear what passed between Judge Trumbour and Mr. Hutchinson; and if so, state how near the parties were to each other?

A. He was in a situation to hear. They were all in the cabin, within a few feet of each other.

34 Q. How near was you to Judge Trumbour and Mr. Hutchinson during this conversation?

A. About fifteen or twenty feet. I was in one end of the cabin.

35 Q. Was William C. Trumbour in bed during the said conversation?

A. He was not.

36 Q. Was you in a situation where you could hear, and did hear, all that passed during the said conversation?

A. I was within hearing of them, and heard all the conversation that passed.

37 Q. Was you as near the parties during the conversation as the said William C. Trumbour?

A. I was not.

38 Q. Did you go to the tavern after this conversation with Judge Trumbour and Mr. Hutchinson.

A. I did not.

39 Q. (By the committee.) Do you know any other matter or thing material to the State, or to either of the memorialists; if yea, declare the same fully and particularly, as though you were hereunto specifically interrogated.

A. I do not, sir.

WILLIAM C. TREMPER.

Sworn the 26th April, 1832, }  
before me.

J. HAMMOND, Chairman.

(No. 11.)

*John J. Tremper's Affidavit.*

IN COMMITTEE—Present, also the Memorialists and their Counsel.

*John J. Tremper*, a witness, produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows:

1 Q. Where do you reside, and what is your age?

A. At Port-Byron, in Cayuga county; my age is 38 years.

2 Q. Were you in company with Jacob Trumbour at Rochester in June 1839?

A. I was.

3 Q. Did you return from Rochester to Port-Byron at that time in company with J. Trumbour and Henry Seymour, Canal Commissioner?

A. I did, except about three miles eastward from Rochester.

4 Q. How did you travel at that time?

A. We travelled as far I think as a place called Fullam's Basin, about eight miles from Rochester, in the stage, and from thence to Port-Byron in a packet-boat.

5 Q. Did you at any time while so travelling from Fullam's Basin to Port-Byron, hear any conversation between Jacob Trumpbour and said Henry Seymour, relative to the surveying of the canals, and if so, state what it was, or the substance of it?

A. I did. Mr. Seymour told Judge Trumpbour that he should include the embankment on both sides of the canal, and on the tow-path side where there was no embankment he should take 12 feet from the top of the slope, or 15 feet from the water; on the berm side, he should take five feet from the top of the slope, or eight feet from the water; include all basins, feeders, lock-houses, and what land was covered with water: and also what he thought was necessary for the State to have.

6 Q. Do you recollect whether Mr. Seymour gave Mr. Trumpbour directions to exercise his discretion, and to vary from this above mentioned, when he thought it necessary?

A. He did.

7 Q. Did Judge Trumpbour then inform Mr. Seymour how he intended to make the survey, and if so, what was said on that subject between them?

A. Mr. Trumpbour mentioned that he was going to run lines on both sides of the canal, mark buildings, and place monuments; and to this Mr. Seymour made no objections in my hearing.

8 Q. Did Mr. Seymour suggest any other method of making the said survey?

A. Not to my recollection.

9 Q. Do you recollect seeing Mr. Trumpbour hand to Mr. Seymour a small paper signed by himself (Mr. Trumpbour,) and Mr. Hutchinson, agreeing to divide the surveys?

A. It is my impression that I did see him hand Mr. Seymour such a paper, but I cannot speak with confidence.

10 Q. Do you recollect hearing Mr. Trumpbour say any thing to Mr. Seymour about the titles of the State to the property along the canal, and if you do, say what it was?

A. Mr. Trumpbour mentioned to Mr. Seymour that he had been to the Comptroller's office for the purpose of ascertaining what property along the lines of the canal had been released to the State, and that he found but very few releases. I don't recollect whether Mr. Seymour made any reply.

11 Q. (By the committee.) Do you know any other matter or thing material to the State or to either of the memorialists, in this investigation? If yea, declare the same; set forth the same as fully and particularly as if you were thereunto interrogated.

A. I do not.

JOHN J TREMPER.

Sworn the 28th April, 1832, }  
before me, }  
J. HAMMOND, *Chairman.*

(No. 12.)

*Henry Seymour's Affidavit and Deposition.*

Present—The Committee, the memorialists and their counsel.

*Henry Seymour* sworn, 24th April, 1832.

1 Q. Have you in your possession, or within your control, any letter or letters by Jacob Trumbour and addressed to you, individually or as Canal Commissioner, relative to the surveying of the canals belonging to the State?

A. I have none to my knowledge. I have handed over to Mr. Earll, my successor, all the papers relating to unsettled canal business, except what have been handed to the Comptroller. Previous to my coming from home on this occasion I looked over my files of papers and found none of the kind inquired for.

2 Q. Have you in your possession or control any papers, of any description, relating to the subject of the canal surveys?

A. I do not know that I have any. It is possible that I may have some among my unfiled letters.

3 Q. Have you, since you were subpoenaed to attend here on this examination, looked for letters and papers, with a view to ascertain whether you had such letters or not.

A. All papers relating to canal business which I have deemed important, I have filed; among these I have examined, and since I was subpoenaed to attend here; still, however, there may be such as are inquired for among those remaining unfiled.

HENRY SEYMOUR.

In Committee, sworn }  
the 24th April 1832. }

J. HAMMOND, *Chairman*.

IN COMMITTEE—Present as before.

Q. (By the committee.) Do you know of any other matter or thing relative to this inquiry, material to the State, or the memorialists; if yea, state the same.

A. So far as I now understand the matters in controversy, I do not recollect of any thing which I can communicate, which is material to the matters in issue. If any explanation or any information be desired hereafter I shall be ready to give it; or if the committee have any questions to put to me now I will answer them.

HENRY SEYMOUR.

Sworn the 25th April 1832, before  
J. HAMMOND, *Chairman*.

I, Henry Seymour, being duly sworn, depose and say, that the annexed letter of Holmes Hutchinson is the only paper in my possession, which relates to the survey of Jacob Trumbour on the canals of the State, and further saith not.

HENRY SEYMOUR.

*Oneida County, ss.*

Sworn before me, the 7th }  
day of May 1832. }

N. WILLIAMS, *Circuit Judge*.

(No. 13.)

*William Campbell's Deposition.*

IN COMMITTEE—Present, as before.

*William Campbell*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Were you present at any time at an interview between Henry Seymour and William C. Bouck, Canal Commissioners, Jacob Trumpbour, David H. Burr and yourself, in the city of Albany, relative to the surveys of the canals? If so, state the time of said interview, as near as you can recollect?

A. I was present at such an interview; I cannot fix upon the time precisely, but it was sometime after the passing of the act directing such survey.

2 Q. Did the said Canal Commissioners, or either of them, in that interview, state the manner in which the proposition for surveying the said canals must be made? If so, what did he or they say upon that subject?

A. If I recollect right, Mr. Seymour said in answer to Judge Trumpbour, that propositions must be definite or specific, and in writing. This response was made to us collectively; we had had some conversation about taking the job jointly.

3 Q. Did this conversation take place in 1827? if so, at what place?

A. I think it was in 1828, at Lemet's boarding-house, in Albany, where the Commissioners lodged.

4 Q. Were you and Judge Trumpbour then members of the House of Assembly of this State?

A. We were not.

WILLIAM CAMPBELL.

Sworn the 2d day of May, }  
1832, before me. }  
J. HAMMOND, *Chairman.*

(No. 14.)

*William C. Bouck's Deposition.*

Present, the Committee, the Memorialists and their Counsel.

*William C. Bouck*, a witness, produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Have you in your possession, or subject to your control, any letters written by Jacob Trumpbour to you, or to any one of the Canal Commissioners, relative to the survey of the canals; and if you have, will you produce the same?

A. I believe I have not. With the exception of the letter of the thirty-first of August 1830, corresponding in substance with the one of that date set out in Mr. Trumpbour's memorial, I have no recol-



lection of receiving any. If I did, they were probably destroyed, as of no importance. If the letter of the 31st was received, it was not preserved, in consequence of being esteemed of no importance.

2 Q. Have you within your possession or control, one or more propositions made by Mr. Trumbour to the Canal Commissioners, for surveying the said canals; or do you recollect that the Canal Commissioners received such propositions?

A. I have no such proposition in my possession, nor under my control, only so far as I should have a right to demand them from my colleague, Mr. Earll, who I suppose has them. The Canal Commissioners received, I believe, two propositions for surveying the canals, from Mr. Trumbour.

3 Q. Do you recollect whether the said propositions corresponded substantially with those set out and referred to in Jacob Trumbour's memorial, pages 15 and 16 of the printed documents?

A. I have no recollection now of having seen the propositions referred to, since the winter of 1829. But I believe that what is stated to be the substance of a proposition in the latter part of the second paragraph of Mr. Trumbour's memorial, at page fifteen, substantially comports with the proposition received from Mr. Trumbour. I also believe that what imports to be a letter and proposition from Mr. Trumbour, pages fifteen and sixteen, dated the twenty-eighth March 1829, substantially comports with the letter and proposition received from Mr. Trumbour.

4 Q. Are you, or have you been, and at what time, clerk of the Board of Canal Commissioners?

A. I am now secretary of the Board, and have been since the organization of the Board in 1827 or 1828.

5 Q. Have you the minutes of the proceedings of the Board of Canal Commissioners of 1829, and particularly those of October of that year?

A. The minutes of the Canal Commissioners are at my residence in Schoharie. I wish to state further, that I left home on Friday of last week, for Schenectady, on public business; from whence I intended to visit the Chemung and Crooked lake canals. I did not carry the minutes of the Canal Commissioners with me, because I had no expectation of being called here until I returned from the canal, if at all. I was served with a subpoena on Saturday afternoon, a very short period previous to my intention of leaving Schenectady for the west.

6 Q. When were you first apprised of the plan of survey adopted by Jacob Trumbour?

A. I do not recollect that I was apprised of the manner of Mr. Trumbour's survey, sufficiently in detail to enable me to determine the difference between that and the plan pursued by Mr. Hutchinson, or to scrutinize in reference to its correctness or accuracy, until the winter of 1830, in January or February. Mr. Trumbour may have spoken of it in several conversations before that time, but not sufficiently in detail to alter what is above stated in this answer. I should state further, perhaps, at this time, as a reason, that after the acceptance of Mr. Hutchinson's proposition in the winter of 1829, the execution of the contracts for making this survey, and the dis-



bursements necessary to be made under the contracts, were assigned to the charge of Mr. Seymour.

7 Q. Do you recollect whether Mr. Trumpbour mentioned that his plan of survey was to run the lines on both sides of the canal, at or about the time he made his first proposition?

A. I do not recollect that remark distinctly, although he may have made it.

8 Q. When were you first apprised of the plan of survey adopted by Mr. Hutchinson?

A. I do not now recollect that his plan was communicated to me sufficiently in detail to enable me to understand it, or decide upon it, until January or February of 1830. But I believe he made some general remarks in relation to it in 1829, probably in February or March of that year. According to my recollection, the views of the Board of Canal Commissioners were, that we did not intend to commit ourselves with regard to the particular manner in which the surveys and maps were to be made, but to reserve to ourselves the right to decide upon them after they had been made in a manner sufficiently intelligible to enable us to decide upon them; to give, notwithstanding, such general directions from time to time, as we might be asked for, or as was considered necessary. What I mean by being sufficiently intelligible, is that the rough sketch of the maps should be sufficiently delineated to be understood with the plan of the survey. As I understand it, it always was the intention of the acting Canal Commissioners to pass through the line of the canal, either together or individually, and satisfy themselves by personal observation whether the surveys were correctly made, before they should finally approve of the survey; and the sketch was to be submitted previous to the furnishing of the maps.

9 Q. Do you know, of your own knowledge, whether Mr. Seymour at any time apprised Mr. Trumpbour that it was necessary that a written contract should be made between them, relative to the surveys of the canals, before any advances would be made to Mr. Trumpbour?

A. I do not now recollect of ever hearing Mr. Seymour make that communication to Mr. Trumpbour.

10 Q. When were you first apprised that there was a difference in principle or plan in the respective surveys of Mr. Trumpbour and Mr. Hutchinson?

A. I have now no distinct recollection of being apprised of it until January, 1830; but I believe it was communicated to me by Mr. Seymour or Mr. Hutchinson in October or November, 1829.

*Cross examination on the part of Mr. Hutchinson.*

11 Q. Did you at any time state to William Campbell or Asa Starkweather that propositions for surveying the canals must be specific, or of a definite character?

A. I have now no recollection of having ever made such statements.

12 Q. Did you ever hear such statement made by either of the Canal Commissioners to the said Mr. Campbell or Mr. Starkweather?

A. I dont now recollect that I have.

13 Q. When the Canal Commissioners deliberated and decided on the propositions of Mr. Hutchinson and Mr. Trumpbour, did it occur to you, or were you reminded by any person that the Canal Commissioners, or any one of them, had required specific propositions?

A. According to my present recollection it did not occur to me at that time, nor was I reminded by any person that the Canal Commissioners, or any one of them, required specific proposition.

14 Q. Did Mr. Trumpbour, at the time he offered his second proposition, or at any time during the pendency of the propositions of said survey, claim or state that his first proposition was made under impressions, derived from the Canal Commissioners, that a specific proposition would be required?

A. My present impressions are that he did not.

15 Q. Did you at any time, either directly or indirectly, previous to or at the time Mr. Hutchinson made his proposition, communicate to him the terms on which Mr. Trumpbour proposed to make the same survey, or dictate or advise as to the kind of proposition he, Mr. Hutchinson, had better make; or was any such information given to Mr. Hutchinson, to your knowledge, by any other person.

This interrogatory is objected to by the counsel of Judge Trumpbour, on the ground that they have never pretended, and do not now pretend that the Canal Commissioners ever made any improper disclosures as to the proposition which had been submitted to them.

The counsel on the other side insisted on the correctness of the question, under all the circumstances of this case.

The question is, however, under all circumstances, deemed admissible, and is admitted, subject to the said objection, to be presented to the House.

A. I am confident I never made any such communication, nor do I know of its having been made by any other person.

16 Q. After the Canal Commissioners had decided in favor of accepting Mr. Hutchinson's proposition, was he requested by the Canal Commissioners, or either of them, at the desire of Mr. Trumpbour to relinquish to Mr. Trumpbour any part of the survey; and if so, by whom was it done.

A. In a conversation with Mr. Trumpbour, after the acceptance of Mr. Hutchinson's proposition, I discovered Mr. Trumpbour felt disappointed and mortified in not getting the contract, and feeling, as I now distinctly recollect I did, an anxious desire to accommodate him, I believe I stated to Mr. Trumpbour a probability that Mr. Hutchinson might be prevailed upon to relinquish a part of it, which appeared to be acceptable to Mr. Trumpbour. Whether he desired me to prevail on Mr. Hutchinson to give him a part of it or not, I can not distinctly say at this time, but my impression is that he communicated a wish of that kind. In an interview with Mr. Hutchinson, I desired him to relinquish to Mr. Trumpbour a part of the survey: Mr. Hutchinson seemed unwilling to do so.

17 Q. Did you communicate to Mr. Trumpbour what took place at that interview.

A. I think I communicated to Mr. Trumpbour that Mr. Hutchinson expressed some unwillingness to relinquish part of the survey to him, and also expressed a fear that Mr. Trumpbour might not be willing to conform to his plan of making the surveys and maps. Mr. Trumpbour I think replied that there need be no difficulty on that point, as there could be a perfect understanding between them before the survey was commenced.

18 Q. Did you communicate to Judge Trumpbour that Mr. Hutchinson had said that he was willing to let him, Mr. Trumpbour, have a part of the said contract, if the objections stated by him, Mr. Hutchinson, could be obviated by Judge Trumpbour's agreeing to the condition mentioned?

A. I have no certain recollection that I made a communication in those terms.

19 Q. Did Judge Trumpbour, in the winter of 1828 or 1829, tell you the terms upon which he would be willing take the contract; if so, state the terms?

A. Mr. Trumpbour stated about that period that he should be unwilling to make the survey, as required by the statutes, for a less sum than \$5,000.

20 Q. Was Judge Trumpbour's plan of a map or survey ever approved of by the Canal Commissioners or Canal Board, before or after he commenced the survey?

A. So far as my knowledge extends it was not.

21 Q. What were your reasons for preferring Mr. Hutchinson's proposition, in preference to Mr. Trumpbour's?

[This question is objected to by the counsel of Judge Trumpbour. The committee are divided: two in the affirmative and one in the negative, (Mr. McDonald.)]

A. I suppose the controlling consideration was, that the terms of Mr. Hutchinson's proposition were more favorable to the State than the terms of Mr. Trumpbour's first proposition; but it occurred to me, and it was the subject of conversation by the Canal Commissioners, that there would be an advantage in employing Mr. Hutchinson, as he had for several years been engaged upon the canals as an engineer, and had also surveyed the whole or a part of the eastern section of the Erie canal, to enable the appraisers to decide upon the claims for damages. He was therefore more intimately acquainted with the views of the Canal Commissioners in relation to the lands necessarily appropriated for the uses and purposes of the canals, and its different structures.

22 Q. At the time of the acceptance of Mr. Hutchinson's proposition, had Judge Trumpbour to your knowledge, ever been employed as a surveyor or engineer on the canals?

A. He had not.

23 Q. Was it well known to Judge Trumpbour, that the Canal Commissioners would not ratify any agreement between him and Mr. Hutchinson without security being first had, that they should adopt and pursue a uniform plan of making their surveys, maps and descriptions?

A. I do not know the fact, as I now recollect, that Mr. Trumpbour was apprised that he would be required to give security to conform to any plan of survey that might be adopted.

24 Q. Did Judge Trumpbour know that a uniform plan of making the surveys, maps and descriptions, should be agreed upon between him and Mr. Hutchinson, or else that the Canal Commissioners would not ratify any contract that had been or might be made between them, relative to the said surveys?

A. I do not now recollect that I ever communicated that fact to Mr. Trumpbour myself, or that I heard Mr. Seymour.

25 Q. Have you examined the plan of survey adopted by Mr. Hutchinson, and that adopted by Mr. Trumpbour; if so, state which plan is in all respects most preferable?

A. I have examined the plan of survey of Mr. Hutchinson, and in the winter of 1830, Judge Trumpbour submitted some rough sketches and gave some explanations of his plan, and from the knowledge obtained in this way, I give a preference to Mr. Hutchinson's plan.

*Direct examination resumed.*

26 Q. Do you understand the plan and its details adopted by Mr. Trumpbour; and if you do, state them as far forth as you can?

A. I do not now sufficiently recollect the plan of Mr. Trumpbour, to enable me to give a detailed description of it; but I understand that Mr. Trumpbour runs a line with compass and chain on both sides of the canal, measuring sometimes from the exterior line to the water's edge of the canal, and sometimes across the canal to his line upon the opposite side, noting down such permanent objects as present themselves upon the line of the canal or in its immediate vicinity. There is not any other point about it that now occurs to me.

27 Q. Why do you prefer Mr. Hutchinson's plan to Mr. Trumpbour's?

A. I suppose that a line run with the compass and chain upon the outer side or exterior bounds of the canal is liable to variation, because the compass will always point in the same direction, and the drawing of the chain is liable to material variation in many situations; the water's edge in the canal is also liable to variations. Mr. Hutchinson adopted the inner edge of the towing-path as a base line on which he predicated his survey. The inner edge is the side of the path next to the canal. I consider the inner edge of the towing-path of the canal as less liable to variation than the water's edge of the canal. In drawing the chain upon the level towing-path, it is much less liable to variation than upon the uneven surface of the exterior bounds of the canal.

28 Q. (By the Committee.) Is the inner edge of the towing path a more permanent line than the division line between the public and private lands along the canal?

A. The bounds between public and private lands along the canals are ascertained, as I suppose, by measuring from the base line,

and are only liable to the same variation that may occur to the base line; when the tow-path is washed or wasted, we repair on the inner edge, so as to preserve the original shape.

29 Q. Does the accuracy of Mr. Hutchinson's plan depend upon the permanency of the inner edge of the towing path, or on the courses and distances taken with the chain and compass?

A. I suppose it depends upon both.

30 Q. If it depends upon both, and they should be found not to agree, which would you consider the true line?

A. That I think might depend upon circumstances.

31 Q. What circumstances do you allude to?

A. The variation or correctness of the compass might be ascertained by the inner edge of the towing-path, when that was found to retain its original shape and position. No other circumstances occur to me at present, except that other permanent objects along the line of the canal, such as locks and bridges, might facilitate the same object.

32 Q. Might the variation or correctness of the compass be equally well ascertained in running the exterior lines upon Mr. Trumbour's plan, by the permanent objects noted upon and adjacent to such lines?

A. I suppose not. I suppose there are many situations along the line of the canal where those permanent objects are not near each other, and cannot be found near the line of the canal; in that case he would be compelled to run the line from his permanent object with his compass and chain, and could not, as I suppose, test the correctness of his line except where he had measured to the water's edge upon the canal, which I suppose is more liable to variation than the inner edge of the towing path.

33 Q. Do you know whether in the survey of Mr. Trumbour, he took the bearings, and distances from his exterior lines to all the locks, waste-wiers and bridges, and other permanent objects and erections connected with and forming part of the canals?

A. The knowledge of the fact is not now within my recollection.

34 Q. If he did so, might not the variations or correctness of the compass on his said exterior lines be equally well ascertained from those objects as upon the base line of Mr. Hutchinson's survey from the same objects?

A. I should suppose that by a reference to the same permanent objects on the canal, the correctness of the compass might be as well tested in the one case as the other, the original reference being the same.

35 Q. Do you recollect when the proposition of Mr. Hutchinson was first communicated to you; where were you at that time, and in what way was it communicated?

A. My present impression is that the first information I had of Mr. Hutchinson's proposition, that is the first time I saw the paper communicating it, was in January, February or March, 1829 in the city of Albany. The way in which the proposition was first communicated to me I do not now recollect, and can not say whether it

was in the first instance handed to me or to Mr. Seymour, and afterwards shewn by him to me.

36 Q. How long after you received that proposition was it before you determined to accept of it, and at what time did you so determine?

A. I do not now recollect the time intervening between the receipt and accepting of that proposition, neither do I now recollect distinctly at what time Mr. Hutchinson's proposition was accepted, but I believe it was in February or March, 1829.

37 Q. Will the minutes of the Board of Canal Commissioners shew at what time Mr. Hutchinson's proposition was accepted?

A. They may and may not; for this reason—the Canal Commissioners may have examined the propositions and determined which to accept, and the entry in the books may have been made at some subsequent period.

38 Q. Can you not say whether the entries in this respect are correct or incorrect as to date?

A. I should suppose the entry gives the correct time at which the formal decision was made; by the formal decision, I mean the official decision of the Board of Canal Commissioners on that subject. But if it should appear that the entry is made in March, without specifying the day of the month, then I should give to it this explanation. The resolutions and propositions are sometimes drawn up and submitted by different members of the Board left in my care, in that situation and transcribed into the book at convenient periods. I think I now recollect one or two instances where in referring to the original papers for the purpose of transcribing them into the book, I found the day of the month had been omitted. If it should be found in this case to have been omitted, I know of no reason for it, unless it was an omission accidentally occurring in the way I have described.

39 Q. If the resolution to accept of Mr. Hutchinson's proposition is entered as of March 1829, without the day of the month, can you say therefrom with certainty that said resolution was passed in the month of March, and not in January or February previous?

A. I should think, and feel certain that if the entries shew the transaction to have been in March, the transaction must have been in March, judging now from the assumed fact that it does so appear.

40 Q. Was Holmes Hutchinson in the city of Albany in the month of March, 1829, to your knowledge?

A. I do not now recollect.

41 Q. Was the conversation between you and Judge Trumbour, by you above stated, in which you stated to Mr. Trumbour a probability that Mr. Hutchinson might be prevailed on to relinquish a part of his contract, and in which Mr. Trumbour desired you, according to your impression, to prevail on Mr. Hutchinson to give him, Mr. Trumbour, a part of the said survey, before or after you received the second proposition from Mr. Trumbour?

A. I do not now recollect.

42 Q. Where did you see Mr. Hutchinson at the time you had the interview with him, in which you desired him to relinquish a



part of the survey to Mr. Trumbour, as by you stated in your answer above ?

A. I now think the conversation was in the city of Albany.

43 Q. Can you now say whether it was before or after the receipt of Mr. Trumbour's second proposition ?

A. I do not now distinctly recollect, but my impression is it was before.

44 Q. Was it before or after the Board of Canal Commissioners had resolved to accept of Mr. Hutchinson's proposition ?

A. I do not now recollect whether it was before or after the formal proceedings I have mentioned ; but I think it must have been after I had become acquainted with the purport of both their first propositions.

45 Q. Was it before or after you had informed Mr. Trumbour that Mr. Hutchinson's proposition was accepted ?

A. I do not now recollect distinctly.

46 Q. Did you see Mr. Hutchinson at Utica, or any other place except the city of Albany, in January, February or March, or previous to the 13th of April 1829 ; and if you did, when and where ?

A. I do not now recollect that I saw him any where else, except in the city of Albany, during that period.

47 Q. Did you communicate to Judge Trumbour, that you had accepted Mr. Hutchinson's proposition, at any time before it had been officially accepted by the Board of Canal Commissioners ?

A. I do not now recollect whether I did or did not.

48 Q. Can you now say with any certainty, whether you saw Mr. Hutchinson in Albany between the first of March and the 13th of April 1829, or whether you had any conversation with him during that period about dividing that survey with Judge Trumbour ?

A. I do not recollect distinctly whether I did or not. In my testimony of yesterday, I conveyed the idea that the conversation with Mr. Trumbour in relation to the division of the contract for making the survey, was previous to a conversation on the same subject with Mr. Hutchinson ; and that he, Trumbour, expressed a wish that I should prevail on Mr. Hutchinson to give him a part of the survey. I now say, that the conversation with Mr. Hutchinson in relation to a division of the contract with Mr. Trumbour, may have been previous to my conversation with Mr. Trumbour, and in anticipation on my part of submitting such a proposition to Mr. Trumbour. If so, the conversation referred to as having been had with Mr. Hutchinson, was after the terms of Hutchinson's and Trumbour's first propositions had come to my knowledge. The conversations referred to are now pretty strongly impressed upon my mind ; but the time at which they were had, I cannot now distinctly recollect.

49 Q. Do you recollect distinctly a meeting of the officers of the Canal Board in January or February 1830, at which specimens of the respective surveys of Mr. Hutchinson and Judge Trumbour were exhibited ?

A. I recollect an informal meeting of the Canal Board about that time, at which such specimens were exhibited.

50 Q. Were there any other objections at that time suggested to Mr. Trumbour's survey, except a want of uniformity in plan between it and Mr. Hutchinson's survey?

A. I do not now recollect. My remembrance of the conversation on that subject is too indistinct to enable me to detail it.

51 Q. Will you look at the third section of the act passed 15th of April 1817, entitled "An act respecting navigable communications between the great western and northern lakes and the Atlantic ocean," and answer whether the book or books directed by that section to be provided, and kept by the Canal Commissioners, with regular entries therein of the determination and appraisal of the appraisers, with an apt and sufficient description of the premises appropriated for the purposes of the canal, have been made; and if so, whether they are in your possession or within your control, and where they are?

A. I recollect to have seen the book referred to by that section, containing the entries made by the appraisers of their decisions, signed by them, or a majority of them. That book is not in my possession; it is not in my control, only so far as I might have a right to call for it from my colleague Mr. Seymour or Mr. Earll.—As I recollect now, the last time I saw that book, it was in the hands of Mr. Seymour, who is not now a Commissioner. In conversation with Mr. Earll some time last winter, as I recollect now, he stated that he intended to obtain it from Mr. Seymour at some convenient opportunity. The book to which I refer, has not been deposited in any of the public offices, for no other reason, as I now recollect, but because it was considered necessary to retain it in the hands of the Canal Commissioners, for the purpose of reference in relation to damages, in order to determine what claims had already been passed upon and paid.

52 Q. Did that book contain entries of any proceedings in reference to any portion of the Erie canal west of Canastota?

A. I do not recollect.

53 Q. Did you ever know of more than one book or set of books used by the Canal Appraisers, by whom the damages were assessed, or for the purpose of making entries relative to the assessment of damages on the canal?

A. My recollection is, that the duty of assessing damages was transferred from the appraisers, who were appointed under the third section of the act of 1817, to any two of the Canal Commissioners who kept one or more books in which entries were made of the claims on which they passed, and their decisions thereon. The power of assessing damages was next transferred by law to any one of the acting Canal Commissioners, and two appraisers to be appointed according to law. The law originating this last board of appraisers, made it their duty, as I now recollect, to report annually to the Legislature the claims upon which they had passed the preceding year. That act was again amended, and the Canal Commissioners were required to keep a book in which all claims passed upon by them were to be entered, and their proceedings on such claims for damages; that book has been kept, and was generally left in the hands of the secretary of the board of appraisers: one



book upon that subject has been filled, and is now, or is to be, filed in the canal room in the Comptroller's office.

54 Q. Do you know where any of the books of entries are, by you above referred to, except so far as you have stated?

A. I do not, any further than I have stated; the secretary of the Canal Board of appraisers, is Mr. Selden, of Troy.

55 Q. Do you know whether there are, or have been, any book or books kept by any of the canal appraisers at any time, containing an apt description, or in any way giving the outlines of the lands appropriated to the use of the State, for the purposes of the canals? and if you do, state what book or books, and where they are, according to the best of your knowledge and belief.

A. I do not now recollect any book or books kept by the canal appraisers, except those to which I have referred. I should think the entries of the claims of damages for lands, contain general descriptions of the premises and lands for which damages were claimed. I cannot state the descriptions from recollection. I should think it was in general, such a description as would not enable a surveyor to locate the outward bounds of the lands of the canal.

56 Q. (By the committee.) Do you know of any other matter or thing material to the State or to either of the memorialists in this investigation? if yea, set it forth as fully and perfectly as if you were thereunto specifically interrogated.

A. There is not any thing that occurs to me now.

WM. C. BOUCK.

Sworn the 2d May, 1832, }  
in committee, before me, }

J. HAMMOND, *Chairman.*

*Extract from the Minutes of the Board of Canal Commissioners.*

At a meeting of the Commissioners, held in the city of Albany, in March 1829, present, Samuel Young, Henry Seymour and William C. Bouck.

*Resolved*, That *David S. Bates* be employed as principal engineer to make the necessary surveys, estimates, maps, &c. for a canal from Binghamton to the Erie canal, and that he be paid for said services at the rate of \$2,000 per annum, including expenses.

*Resolved*, That *Holmes Hutchinson* be employed to make a survey, field notes and maps, of the Erie and Champlain, Oswego and Cayuga and Seneca canals, in pursuance of the several provisions of chapter 9, title 9, and article first of the Revised Statutes; and that he be paid \$4,000 for said services, and all the attending expenses; and such further sum, not exceeding in all \$5,000, as may be necessary to cover proper disbursements.

*Resolved*, That said survey and maps shall include all feeders and their appendages. The boundaries of the canal shall extend from the foot of the outside slope of the banks, and where there is no embankment, the lines are to include a space of five feet on the berm side, and twelve feet on the tow-path side; to include all basins and slips made at the expense of the State, and also those made

by individuals; all lands purchased by the State, and edifices, artificial channels for conducting water from culverts, waste-weirs and weigh-locks; streams passing the line of canal, and all lands flowed by water, are to be included on the map; and all hydraulic erections which are supplied with water from the canal, and the owners' names.

WM. C. BOUCK, Sec'y.

At a meeting of the Canal Commissioners, held at Utica on the 13th of Oct. 1829, present, Stephen Van Rensselaer, Samuel Young, Henry Seymour and William C. Bouck.

The Board adjourned until 9 o'clock to-morrow morning.

October 14.

The Board met pursuant to adjournment.

Present, Stephen Van Rensselaer, Samuel Young, Henry Seymour and William C. Bouck.

(No. 15.)

*Deposition of Silas Wright, Jun.*

IN COMMITTEE—Present, Mr. HAMMOND, *Chairman*.  
Mr. M'DONALD,  
Mr. HOGEBOM.

*Silas Wright, Jun.* a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows:

1 Q. Will you look at the letter now presented you with its enclosure, each marked G, said letter dated 12th October, 1829, and state to the committee whether that letter was written to Jacob Trumbour by you at or about the time it bears date, and whether the paper now enclosed is the same which you enclosed to him in said letter?

The following is a copy of the letter:

“COMPTROLLER'S OFFICE,  
Albany, 12th Oct. 1829.”

“Sir—Enclosed you are furnished with copies of the boundaries or descriptions of all the premises belonging to the State west of Utica, and connected with the Erie canal, to which any title has been found in this office.

“I am, with great respect,

“Your obedient servant,

“SILAS WRIGHT, Jun.

“JACOB TRUMBOUR, Esq. Utica.”

A. I answer, this letter is signed by me. The letter is in the hand-writing of a clerk in my office. The superscription is in the

hand-writing of John T. Vernor, another clerk in my office, and my impression is that the paper enclosed is in the hand-writing of John Cuyler, another clerk. I have no doubt the letter, with the enclosure, was sent from my office to the post-office, directed to Mr. Trumbour.

The witness being shewn another letter, dated 19th October, 1829, with the enclosure, marked H, says the body of this letter and the enclosure, I believe to be in the hand-writing of clerks in my office. The signature to the letter is my own. I have no doubt this letter, with the enclosure, was sent in like manner to the post-office.

The following is a copy of said letter :

“ COMPTROLLER’S OFFICE, }  
Albany, 19th Oct. 1829. } ”

“ Sir—The enclosed copies of the boundaries of the lands occupied by the lateral canal from the Erie canal to the salt works at Montezuma, and conveyed to the Canal Commissioners for the use of the State, were inadvertently omitted in my letter to you of the 12th instant.

“ Respectfully yours, &c.  
SILAS WRIGHT, JR.

“ JACOB TRUMBOUR, Esq.”

2 Q. Will you give to the committee the entries upon your books of monies advanced to the Canal Commissioners, or either of them, to defray the expenses of surveying the canals under the act of 1827?

A. There are no entries of money paid to them to my knowledge, but monies were paid to their order. I will give you the entries as they are in my book :

1829, Sept. 16. To cash from Treasury, paid to Hutchinson by order of Mr. Seymour, ..... \$1,500

1830, June 18. To cash paid to Commissioners of Canal Fund by order of Henry Seymour, ..... 1,500

These are all the entries that I know of in this book.

#### IN COMMITTEE.

*Further examined on the 15th May, 1829, by Mr. Hutchinson.*

3 Q. Why did you, as Comptroller, furnish Mr. Trumbour with copies of the papers alluded to in your former testimony to this committee; and did you so furnish them because you considered him in the employ of the public?

A. My recollection is, that the first I knew of the subject was the presentment to me by George W. Newell, then at the head of the Canal Department in my office, of the first of the two letters that were exhibited to me on my former examination, together with the copies enclosed in the former letter, and he informed me that the copies had been made at the request of Mr. Trumbour. In relation to the last part of the question, I can only say, we were at that time in the habit of furnishing copies of papers to any gentleman who asked them. And I should have furnished them to Mr.

Trumpbour at his request whether he was in the public employ or not. I probably supposed him to be in the employ of the Canal Commissioners, from the character of the papers called for. After the first papers had been sent, we discovered that there were other papers in the office of the same kind, and sent them also, which was the cause of the second enclosure.

*Question on the part of Judge Trumpbour.*

4 Q. Have you in your office any books furnished by the Canal Commissioners or canal appraisers, containing an apt or other description of the different parcels of land taken from individuals for the use of the canals?

A. I am unable to answer that question. I have books in my office left there by the canal appraisers, and I believe some by the Canal Commissioners, but I have never had occasion to examine them, whether they contain any descriptions of the property inquired after. If there are any such, they are in the canal room, under the immediate control of John T. Vernor, the clerk who now has charge of the room.

SILAS WRIGHT, Jun.

Taken and sworn }  
in committee. }

J. HAMMOND, *Chairman.*

(No. 16.)

May 4th, 1832.

*Ephraim Beach's Deposition.*

IN COMMITTEE—Present, Mr. HAMMOND, *Chairman*,  
Mr M'DONALD,  
Mr. HOGEBROOM.

*Ephraim Beach* sworn, on the part of Mr. Hutchinson.

1 Q. What is your profession?

A. Surveyor and civil engineer.

2 Q. How long have you followed that profession, and on what works have you been employed?

A. About seventeen years since I first commenced the practice of surveying as a business or profession. For the last twelve years, or about that time, I have been employed as an engineer upon public works. During that time I have been employed upon the Erie canal, in this State; upon the Schuylkill and Canestoga navigations, in Pennsylvania; and upon the Morris canal, in New-Jersey. I have also been employed as engineer in the survey of several rail-roads.

3 Q. Have you examined the map and field-book of the survey of the Champlain canal, made under the direction of Mr. Hutchinson, and now exhibited to the committee?

A. I have.

4 Q. Have you made surveys for similar purposes?

A. I have.

5 Q. What plan did you pursue in your survey ; and why ?

: [This question objected to, on the ground that it is immaterial what plan he may have pursued.]

A. The plan I pursued was by running a base line upon the inner edge of the towing-path, the courses and distances taken by the circumferentor, or ordinary surveyor's compass, and chain ; offsets made at each angle, bisecting the angle, and noting the distance from the base line to the exterior bounds of the land necessary for the canal ; and noting also all permanent objects contiguous to or connected with the canal ; and their relative situation to the base line. I adopted that plan first, as being in my opinion calculated to afford the best facilities for ascertaining, with the least difficulty, at any future period, the bounds of the public property ; and, secondly, as being most economical.

6 Q. Does the survey of Mr. Hutchinson afford the means of ascertaining hereafter, with the necessary precision, the bounds of the canals ?

A. I think it does, so far as I have examined it.

7 Q. Do you or do you not consider the method pursued by Mr. Hutchinson preferable to that of measuring the exterior lines or boundaries of the canals, by taking their courses and distances in the usual way ?

A. I pursued the plan myself from the conviction of its being the most ready and correct way of ascertaining the boundaries.

8 Q. Will you state your objections to the method of measuring the outlines as alluded to in the last question ?

A. One great objection is the innumerable obstacles that are found at the outer edge of the canal banks, such as swamps, thickets, streams of water, &c., frequently occurring, which render it very difficult to run a correct line, and to measure correctly. In addition to that, the additional labor to execute this work, and the consequent increased expense, are another objection.

9 Q. In what respect do you consider the plan as pursued by Mr. Hutchinson superior to that of Jacob Trumbour, last referred to ?

[Answer to be given in the afternoon, it now being 2 P. M. Adjourned to 4 P. M.]

4 P. M.—Present the Committee.

[To the above question the witness produced his answer at 5 o'clock in writing.]

A. In the plan pursued by Mr. Hutchinson the line is run upon the even and level edge and surface of the towing-path. A careful reference is had to all convenient permanent objects, such as locks, aqueducts, culverts, waste-weirs and bridges, noting the particular distance of the locks from the base line, and of the others on the base line ; the intersection of the base line with the division lines between farms, and parcels of land, with its distance from the outer bounds of the canal property, is also particularly noticed, by which, together with the offsets taken at each and all the different angles of the base line, furnishes ample data whereby to ascertain the exte-

rior bounds of the State property, and to calculate the quantity of land taken from any individual without the aid of a survey or surveying instruments, other than a measuring line. Every intersection of the base line with the division lines of lands, furnishes an object of sufficient permanence from which by measurement to ascertain the location of the different angles of the base line. The offsets from the base line being made from the bisected angles to the exterior bounds of the canal, the outer angles correspond with each other, and with the curved line of the canal.

Whereas, in surveying the exterior lines of the canal, two distinct lines must be run, one upon each side of the canal, frequently over an undulating surface, sometimes behind high embankments, where but a very indistinct view can be had of the ground to be surveyed. Consequently angles will not unfrequently occur on opposite sides, which will not correspond with each other, nor with the general location of the work; and in many places the survey must necessarily be made on the towing-path, and offsets taken to ascertain the outer bounds. The local or permanent objects to be referred to being at a greater distance, and frequently upon a different level, from that of a base line upon the towing-path, the reference cannot be taken with as much facility and precision. The permanent objects upon the State property, together with the fixed points at the intersection of division lines, are in my opinion sufficient for all the purposes for which such objects are necessary, and constituting part of the canal, must necessarily be preserved. Reference to trees, stumps, stones, or even buildings, is more uncertain, they being liable to decay, or at any time to be removed; hence permanent objects outside of the bounds of the public property, I think are but little to be relied upon. In giving my opinion I do not wish to be understood that a survey cannot be made at the exterior bounds of the canal banks, for I believe such a survey may be made to answer all necessary purposes. But I do say, that the survey can be made from a base line upon the towing-path, with more accuracy, and with greater facility and economy.

10 Q. Is it not a leading and main object of such canal surveys, to obtain the requisite data for determining with the greatest possible certainty and precision, the bounds of the canal at a future day?

[This question is objected to by the counsel on the part of Judge Trumbour, on the twofold ground that it is a leading question, and secondly that it is an inquiry into the motives of the Legislature to be effected by the law.]

This question was argued on both sides.

The majority of the committee overrule this question. J. Hammond is of a contrary opinion; he would admit it.]

11 Q. What is the object of making such canal surveys?

A. The object where I have had the direction of such survey, has been to procure data to be preserved as matter of record, whereby to ascertain at the present or any future period, the bounds of the property occupied by the canals.

12 Q. Have you examined some of the rough maps and field notes presented to the committee by Judge Trumpbour, so far as to become acquainted with his plan of surveying the canals?

A. I have examined, and I believe understand them, so far as they are indicated by the field notes and maps, without his personal explanation.

Adjourned to the 5th May, 9 o'clock A. M. 1832.

*Saturday, May 5, 1832.*

Present the committee, &c.

*Ephraim Beach* further examined on the part of Mr. Hutchinson.

13 Q. Whose survey depends most for its accuracy on the magnetic needle, Mr. Hutchinson's or Mr. Trumpbour's?

A. That is more than I can determine; I believe both depend on permanent objects, noted along the line, as a check upon the variation of the compass.

14 Q. Will you explain to the committee, what permanent objects are noted in Judge Trumpbour's field notes?

[Objected to. Objection not allowed.]

A. So far as I have examined, I find buildings, bridges, stumps, trees, stakes and logs referred to. Reference is also made to locks and to the canal.

15 Q. Do the minutes entered in Judge Trumpbour's field notes and map, indicate that very great care had been taken in making the survey?

[This question is objected to, as only questions of science and skill, can in the nature of things be known to this witness, and none other ought to be propounded to him.

The question is regarded as admissible.]

A. I could not undertake to give an explanation or a construction of his field notes; from the examinations I have made, I think it subject to the same difficulty that I have previously described, in relation to the comparative merits of the two plans.

16 Q. Will you name places on the Erie canal within your knowledge, where it would be difficult to run a line with the chain and compass, at the foot of the outward slope of the embankments or towing-path; and what are those difficulties?

A. There are several places on the Mohawk river, a place at Yankee Hill, another at Palatine church, where the slope of the bank runs into the river a considerable distance; that opposite Palatine church, about a mile and a half in extent. There are several other like places not so extensive, where it would be extremely difficult, if not impracticable, to make a survey at the outer slope of the embankment.

17 Q. Are you acquainted with Mr. Edwin F. Johnson?

A. I am.

18 Q. What is your opinion of him as a civil engineer and surveyor?

A. He was in my employ last season as a surveyor, and I think him very competent.



*Cross-examination.*

19 Q. (On the part of Judge Trumbour.) Have you surveyed any canals after they were completed, for the purpose of defining the bounds of the public property ; if so, what canals, under what authority, and what were your directions.

A. I, as chief engineer, directed and superintended such surveys of the Morris canal in the State of New-Jersey, under the laws of that State. My directions were to survey it according to the provisions of the charter.

20 Q. When was that charter granted, and what were its provisions ?

A. The charter was granted in 1824. I have not sufficient recollection of the charter to state its provisions.

21 Q. What knowledge have you whether the reference to convenient permanent objects in the survey of Mr. Hutchinson, was carefully made ?

A. None.

22 Q. Look at the map and field book of Mr. Hutchinson's survey, and point out any sheet or page thereof to the committee, where the distance from the intersection of his base line with the division line between farms to the exterior bounds of the public property is particularly noticed ?

A. I do not see it particularly noted.

23 Q. Could any person whether a surveyor or not, ascertain the location and angles of the base line of Hutchinson's survey, without a compass, in any other way than by a reliance upon the inner edge of the towing-path ?

A. I think not.

24 Q. Where is the inner edge of the towing-path ; is it upon the angle of the slope according to the transverse profile adopted in the construction of the canal ?

A. It is on the side next to the canal.

25 Q. Is that angle preserved, or is it worn away by the rains, by the treading of men and horses, by the washing of the water of the canals, by the wearing of the towing lines and other causes, so as in most instances to present a curve instead of an angle ?

A. The angle is liable to be worn off by the towing line ; in some instances it may be affected by rains. I do not know that it has been affected by the travelling of beasts in any considerable degree, in places where I have been acquainted. Neither do I know of any circumstances that has fallen under my observation, where the inner edge of the towing path has been materially altered from any of the above causes.

26 Q. If the angle of the towing-path is worn off so as to present a curve instead of an angle, how would you ascertain in running along there, whether you were upon the angle ?

A. I should be dictated in my judgment by the shape of the banks.

27 Q. According to Mr. Hutchinson's mode of survey, if you should err in relation to that angle, and get further from the canal



than the true angle, would it not move the outer bounds of the public property proportionally?

A. It would.

28 Q. Suppose the location and angles of the base line ascertained, could any person, whether a surveyor or not, correctly bisect the angle without a compass on the ground?

A. I think they can.

29 Q. Can it be done by any person except such as have a knowledge of surveying?

A. I think it would require a person accustomed to some calculations, but need not necessarily be a surveyor.

30 Q. How would a person not a surveyor calculate the quantity taken from the farm of any individual, for the use of the canal, by Mr. Hutchinson's mode of surveying?

A. It is not indispensable that a person must be a surveyor, to set the outer stakes at the angles, measure the distance between them, and calculate the superficial contents.

31 Q. Can that be done without any knowledge of surveying?

A. A man may have a sufficient knowledge of the theory and practical use of arithmetic, to make such calculations, without being a practical and professed surveyor.

32 Q. Will you look at Andrew Law's farm, on the second sheet of Atlas No. 1, Hutchinson's survey, and state, whether without instruments or tables, you yourself could ascertain the quantity of land taken out of the said farm for the use of the canal?

A. Upon the supposition that this is a correct survey, I think I should require no other to aid me in calculating the contents. I do not think I should require instruments or tables.

33 Q. Is the intersecting point of the base line with the farm line a visible object? If not, how can it be an object of sufficient permanence, from which, by measurements, to ascertain the location of the different angles of the base line?

A. It is not a visible object, but the division line between lands, being supposed to be permanent, and also the base line; their intersection may always be found.

#### *Adjournment—4 P. M.*

At which time the memorialists and their counsel came.

Present, Mr. M'DONALD, } Committee.  
Mr. HAMMOND, }

34 Q. How would you calculate the quantity of land taken from any individual farm for the use of the canal, by Mr. Hutchinson's map and field-book; take the farm of Andrew Law for example, and state your answer with reference to that?

A. By getting the length and course of the base line, the angles at the offsets, and the length of those offsets, data is obtained, whereby to calculate the outer bounds, from which the contents may be ascertained.

35 Q. Can you give a more explicit answer?

[A. No. 335.]

A. I think the answer sufficiently plain and comprehensive. I do not know of one more appropriate or explicit.

36 Q. Do you consider it of any importance that the outer angles, or the angles of the exterior bounds of the canal, should correspond with each other; if so, why, and how can they be made to correspond when one exterior line is straight, and the other exterior line directly opposite is crooked, or has different courses, by reason of heavy embankments, basins, coves or the like?

A. I think it of the greatest importance that they should correspond with the canal and its banks, but not that they should in all cases be opposite each other: The situation of the work does not require or admit it.

37 Q. Is there any difficulty, in running the exterior lines upon Trumpbour's plan, in making the canal [angles] correspond with the canal and its banks?

A. I do not know that I have any answer to that, other than I gave yesterday of the general difficulty of running the outer lines. I believe it may be done with tolerable accuracy, by bestowing sufficient labor and expense.

38 Q. Do you not know, that upon Hutchinson's plan of survey, he is frequently under the necessity of surveying the outlines of the canal according to Trumpbour's plan?

A. It is obvious from the map, that the outer bounds are surveyed when there are ponds and basins: It could not well be done in any other way.

39 Q. Does the whole survey, upon Hutchinson's plan, consist of a base line and offsets, except at ponds and basins; and do his said base lines and offsets constitute any part of the outbounds; and if not, are the bounds of the State property designated by them, or are they only the data given by which the said outer bounds may be ascertained?

A. I believe, so far as I have examined it, the survey consists of a base line and offsets. If when these offsets were made, stakes were driven down, or other monuments placed at the end of each, then they constitute outer bounds; if not, then it only furnishes data whereby to find the outer bounds.

40 Q. If stakes or monuments were so placed at the end of these offsets, are any designations of the outer bounds intermediate those points?

A. I do not know whether objects were placed or not.

41 Q. Would he naturally have so done, according to that plan of survey?

A. No; not unless some exigency required it particularly.

42 Q. Can you discover, from his map and field-book, that he did so in any case?

A. I do not.

*Further examined on the part of Mr. Hutchinson.*

43 Q. Do you intend, in your answer to a previous question, to be understood to say that it was only around ponds and basins that Mr. Hutchinson, in his said survey, run the outward boundaries; or

does it extend to all cases where the State property projected beyond the usual distance from the base line?

A. I think I prefaced my answer by saying, so far as I know. If there are any departures from that, it has escaped my observation.

44 Q. If, at any future time, when no stakes or monuments remain on the outward boundaries, the question should arise, whether an encroachment upon the State property, complained of, was such or not, how would you, upon Mr. Trumpbour's plan of survey, ascertain the fact?

A. I would ascertain it by a re-survey from Mr. Trumpbour's field-notes.

EPHRAIM BEACH.

Sworn and taken in committee.

J. HAMMOND.

(No. 17.)

*J. D. Selden's Affidavit.*

IN COMMITTEE—Present as before.

*Joseph D. Selden*, a witness produced, sworn, and examined on the part of Jacob Trumpbour, the memorialist, testifies as follows:

1 Q. Are the three books by you now presented before the committee, all the books in your possession containing entries of adjudication by the appraisers of damages on the canals?

A. They are.

2 Q. Do you know whether there are any other books containing such entries; and if any, where they are?

A. There are others, I suppose. I saw one in the possession of Mr. Seymour some time last summer. I did not look into the book, but from the purport of the passages he was reading, I formed that opinion.

3 Q. Are you one of the Canal Appraisers; and how long have you been so?

A. From April, 1825, to the present time. I was appointed under the act of that year.

4 Q. Do you perform the duty of secretary of the board of Canal Appraisers; and how long have you done so?

A. I have performed that duty ever since we entered upon the business.

5 Q. Are there any entries in the above mentioned books, or any other books within your knowledge, of an apt description, or a description by metes and bounds, or courses and distances, of the different parcels of land appropriated to the use of the canals, and for which damages were appraised?

A. There are not.

JOSEPH D. SELDEN.

Taken and sworn, &c. }  
in Committee. }

J. HAMMOND, *Chairman.*

(No. 18.)

*Benjamin Overbagh's Deposition.*

IN COMMITTEE—Present as before.

*Benjamin Overbagh*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Are you a surveyor; and did you, as such, assist Jacob Trumpbour in surveying any part of the canals of this State; and if so, what part?

A. I am a surveyor, and as such, I assisted him in surveying the Erie canal from Buffalo, where we commenced, to Lockport. At Lockport we skipped about a mile which Mr. Trumpbour had surveyed the year before, and commenced our survey and continued it to Genesee feeder; then we commenced at Canton, and surveyed the canal from thence to Canastota. We surveyed the whole of the Oswego canal. The Oswego is about forty miles.

2 Q. How long were you in performing the said survey?

A. We commenced at Buffalo some time on or about the 21st of June 1830, and continued until in or about the month of September in the same year.

3 Q. How many surveyors were employed in the business at the same time with yourself?

A. Only Mr. Trumpbour and myself.

4 Q. How was that survey made?

A. Mr. Trumpbour surveyed on the tow-path side and myself on the berm side, except along the Tonawanda creek and Oswego river, where there is no berm side. There we occasionally changed, alternately surveying on the same side. In the important villages we went both together, on one side first and then on the other. Mr. Trumpbour generally keeping the notes, and I carrying the compass.

5 Q. Upon what principal or plan was that survey made?

A. It was by taking the courses and distances along the several sections of the canal on both sides, so far as the respective sections were straight or nearly so, and setting stations at the angles where the respective courses and distances terminated, noting the same.

6 Q. Do you recollect how much land was included on the tow-path side where there were no embankments, ponds, basins, or the like. If yea, state it?

A. Fifteen feet.

7 Q. How much land was included, where there were no such objects on the berm side?

A. Eight feet.

8 Q. Did you run the lines on both sides, so as to include embankments, basins, ponds, and other things necessary for the use of the canal?

A. Yes.

9 Q. Did you at any time take check lines from stations on one side of the canal to stations on the other side; and if so, did you take and note down their bearings and distances?

A. We did.

10 Q. What objects did you note along the exterior lines, if any, standing upon those lines?

A. We noted every building, and whatever permanent objects were upon the line.

11 Q. Did you mark such buildings and objects?

A. Yes.

12 Q. Did you measure the distance which every building so marked encroached within the line of the State property, and note down the measurements?

A. Yes, with the exception of a few old buildings, which we did not consider of any consequence.

13 Q. Did you take and note the bearings and distances of any objects standing either within or without the lines. If so, state as particularly as you can the nature and description of such objects?

A. We took the bearings and distances to bridges, tow-path bridges, buildings within the line, aqueducts, culverts, locks, waste-wiers, and every thing of that description. We also generally took the bearings of corners of buildings within short distances of the outward lines of the canal, and noted the distances. We also noted lot lines, town lines, county lines, and went some distances to corners of lots and towns, and noted their bearings and distances. In one instance we so noted were four towns cornered. In many instances we also ascertained from the nearest inhabitants the corners of the adjoining towns, and noted their bearings and distances from stations on outer lines of the canal, where the point at which we took. If such last observations happened to be at the end of a course, we set a stake or station. When such observation was taken in the middle of a course or straight line we noted the distance from the last station to the point or angle of intersection.

14 Q. Did you note the lines of lots, towns and counties wherever they crossed the lines of the canal?

A. So far as I recollect, we did as far as they came to our knowledge; but it might not have been done in all cases, where they occurred in swamps or other difficult places where they could not be ascertained.

15 Q. Was the same uniform mode pursued throughout the whole course of survey, so far as you assisted in it?

A. Yes.

16 Q. Are the field notes of Trumbour's survey now before the committee, the original field notes taken on the ground?

A. Yes they are.

17 Q. Look at the specimen of field book marked Exhibit 1, 3d May, 1832, and state whether a field book of the whole survey can be compiled from the original field notes, corresponding with the same specimen without difficulty?

A. Yes, I cannot see any difficulty in doing it.

18 Q. Were the field notes of Judge Trumbour's survey kept in such a manner, that all the lines, their courses and distances, together with the bearings and distances of the permanent objects to which you have referred, may, from them, be correctly laid down and delineated on the map?

A. Yes, I believe they can be all correctly laid down, with the exception of some I did not exactly understand, and which may require some explanation. What I mean is, that in protracting the survey, I found some two or three instances where the two surveys of the two sides of the canal did not agree, they needed some explanation, or a resurvey.

*Cross-examination by the Counsel of Mr. Hutchinson.*

19 Q. Is one of the books or field notes now before the committee, a book in which you entered your minutes of survey on the berm side of the canal from Buffalo east, alluded to in your direct examination, and if so, how far does it extend?

A. It is. It extends east from Buffalo, as far as Spencer's Basin, which I believe is in Ogden, Monroe county.

20 Q. How often did you set stations in your survey, and what kind of monuments did you place there?

A. Most generally at the end of every course, the monuments set were usually stakes and marked; they were about two feet long.

21 Q. Is it probable that any considerable portion of those stakes is standing?

A. I should think it doubtful.

22 Q. In your field notes, the distance is put down in feet from the station to the canal, how often did you make those measurements?

A. We did them at every station, unless there was some swamp hole, and as often as they are noted in the field book. The distance was some times put down in feet and some times in links.

23 Q. What part of the canal did you measure to at each station?

A. On the berm side we measured to the water's edge, and did the same so far as I know on both sides.

24 Q. Where there was no berm banks formed, to what line did you measure?

A. We measured to the water's edge.

25 Q. Did you measure to the water's edge where there are basins and land flowed?

A. We measured to the water's edge in all the basins; we took in all the coves; in some cases the land was low and marshy on the berm side, and the adjoining land covered with shallow water, there we run the line along the canal, according to its courses, at the distance from it usual in such cases, being about eight feet, where there was no embankment.

26 Q. Is the water's edge or surface on the berm side always a line parallel to the tow-path, or is it some times very serpentine and irregular?

A. It is not always parallel to the tow-path, but some times very crooked and irregular.

27 Q. Have you any stations in the water where it is shoal, or the lands flowed by the water from the canal?

A. I do not recollect of any.

28 Q. Were the courses of your offsets to the canal taken?

A. We did not, except in cases of wide embankments, and there we did.

29 Q. How often did you measure check lines across the canal?

A. We did it as often as we could get an opportunity; as when we came to a bridge, sometimes one in a quarter or half a mile, sometimes a mile or more. I cannot say that we did it at every bridge, as bridges were sometimes close together. We sometimes took check lines across with a boat. We set stations, and took courses and distances where we run check lines across the canal.—There may have been instances of running two miles without running the check line, but they were seldom.

30 Q. Did you measure across the canal at every farm or lot line?

A. We did not at every lot line, but did in some instances; in some cases we could not find the lot line, but where we found them, we generally noted the distance from the last station to the intersection of the lot line with the line of the canal.

31 Q. How did you make the survey where there were objects, such as buildings, in the line of the outward boundaries of the canal?

A. We run up against the building, and noted the distance and course from the last station, and the number of feet which the building encroached within the boundary lines of the canal, and then by making an offset round the building, continued the line on the other side of it.

32 Q. How often did you make offsets, did you do it to cross creeks, and sometimes to avoid swamps, marshes, thick brush, or other obstructions in the out bounds of the canal? state particularly.

A. I cannot say how often we made offsets. I have no recollection of taking any offsets across creeks. I have taken offsets in swamps where there were obstructions in the way, and probably in other places, but cannot state particularly as to that now.

33 Q. Did you make an offset to cross Genesee river; if yea, where was the measurements made?

A. We continued the course across the river with the compass, but went over with the chain upon the aqueduct, and measured the distance across the river, we made an offset for that purpose.

34 Q. Look in your book of field-notes at St. in Pendleton number 30, where the distance is set down at 187 chains, 14 links, and the remarks are to St. 31, at about 80 chains town line, between Pendleton and Lockport; was the chaining actually done throughout the exterior of the line upon the map or as it is designated in the field-notes?

A. It was chained with the chain.

35 Q. (By the committee.) Why was the distance from Station 30 to the town line between Pendleton and Lockport stated doubtfully in your field-notes as being about 80 chains?

A. Because I could not ascertain exactly where the town line intersected the line of the canal on the berm side.

36 Q. (By Mr. Hutchinson.) Did you protract the maps, or any part thereof of Mr. Trumbour's survey, if so, or of what distance as near as you can recollect?



A. I protracted pretty much all.

37 Q. Did you in your protracting find the courses and distances of the sides correspond precisely with your check lines?

A. They most usually corresponded as well as surveys do. I yesterday stated there were two or three instances in which the courses and distances did not correspond, those I left for further explanations. I do not now recollect any others.

38 Q. When the acting Canal Commissioners go along the line, and direct in some instances more, and in some less ground to be taken into the canal, as they may do before the maps are directed to be made, would it not derange the present order of the field notes of Mr. Trumpbour's survey, and require a new survey to conform to those alterations?

A. It can be done without taking a new survey. It will not derange Mr. Trumpbour's field notes that I can perceive. But the station set in the ground would not correspond with the map in those parts where the alterations were made.

39 Q. Look at Mr. Trumpbour's map, beginning at Buffalo, and inform the committee whether, if station number five on the west or towing-path side should be moved twenty feet further from the canal, by order of the Canal Commissioners, would Mr. Trumpbour's field notes then include the additional lands so directed to be taken in?

A. His notes would differ from it; they would not include it; but the notes might be made to correspond with the direction, by calculation, without a survey.

40 Q. Have you the distance measured on more than two sides of the land taken from any farms or lots of land, for the purpose of the canal, in yours and Mr. Trumpbour's field notes.

A. When we came to a known lot line, intersecting the canal, we noted the distances, and generally took a check line across the canal, with course and distance in the direction of the lot line; by this means we measured three sides of the ground taken. There were other instances in which we did not measure the cross line.

41 Q. How many check lines are there noted in your field notes, from the tow-path bridge at Pendleton to the first bridge in Lockport village, a distance of seven miles?

A. There appears to be four in Judge Trumpbour's field notes; I do not recollect that there are any in my notes, in that distance. The first one of which is at Pendleton; the second one is at the commencement of the long course, of 184 chains; the third is at the end of that course; and the fourth is at Lockport, by the bridge across the head of the locks.

42 Q. By Judge Trumpbour's survey, where you assisted, were not the field notes of each lot of land taken for the canal inserted by different individuals, in different field books, one for each side of the canal?

A. I have once explained how the field notes were kept. I don't know that I have any further illustrations to give.



*Further examination on the part of Judge Trumbour.*

43 Q. How many persons were, at the same time, engaged in making Judge Trumbour's survey, while you were with him, and in what capacity?

A. Two surveyors, four chainmen and two axemen, flagmen, in all eight employed in surveying; one cook, who had the care of boat, and sometimes a boy also to drive the horse, being ten in the whole.

44 Q. Did you frequently make your stations at permanent objects, such as buildings and the like; and if so, were they noted?

A. We did as frequently as we had an opportunity of so doing; when so done, we noted it in the field notes.

45 Q. Where the long distances occur between your check lines are they upon sections where the canal, its embankments and courses were uniform, or nearly so?

A. Yes.

46 Q. Were you in the habit of correcting your survey as it progressed, by comparing courses and distances oftener than check lines occurred?

A. We did.

47 Q. Can you, from the field notes of Judge Trumbour's survey, give the true metes and bounds of the several lots of land taken from the different farms for the use of the canal?

A. I think it can be done.

*Cross-examination by the Counsel for Mr. Hutchinson.*

48 Q. Look at Trumbour's map, beginning at Buffalo, and the land described as belonging to Samuel Wilkinson and David E. Evans, and state whether any check lines are there put down, and how you would describe those lands there taken by metes and bounds?

A. I do not know that any check line passes through their land. I do not know what proportion of the land taken belongs to them, but the quantity of land there taken for the use of the canal may be ascertained by metes and bounds from the survey of Mr. Trumbour. I cannot give the quantity taken for that particular section of the canal, not having the minutes.

49 Q. Can you describe the metes and bounds of the land taken for the canal from the farm of Walter Osborn, as laid down in Judge Trumbour's map and field-notes, now before the committee; and how would you do it?

A. I cannot from the map only, but with the aid of the notes I can, by beginning the line at the boundary between Osborn and Buck; thence to the east bounds of the lot, as the courses and distances are laid down, on the tow-path side; thence along the boundary line across the canal south, thirty-four degrees east, to the south bounds of the canal on the berm side; thence along the outer lines of the canal to the west line of the farm, as the courses and distances are laid down; thence across the canal along the west boundary of the farm, north thirty-four degrees west, to the place of beginning.

50 Q. The courses across the canal being given on each side of the above farm, how would you ascertain the distance across the canal on those lines?

A. In this case it may be done by scale and dividers, and by protraction, there being a check line between the two boundaries, which gives the breadth of the canal.

51 Q. How long is that check line, and how far is it from each side of the farm?

A. The check line is one hundred and nine feet long, and is taken at a station six chains and twelve links from the west side of the farm, and from the east side of the farm thirty-six chains eighteen links.

52 Q. You mentioned in your direct examination, that you were in the habit of correcting your survey as it progressed, by comparing courses and distances oftener than the check lines occurred; how did you do it?

A. We were generally in the habit of asking each other across the canal, what course they were running, and what the distance was. In long distances, in setting our stations we placed them as nearly opposite as possible.

BENJ. OVERBACH.

May 9, 1832. Sworn and }  
taken in committee. }  
I. HAMMOND, *Chairman.*

(No. 19.)

*John B. Jervis's Deposition.*

Present, the Committee.

*John B. Jervis*, a witness sworn in behalf of Mr. Hutchinson, deposes as follows:

1 Q. What is your profession?

A. Civil engineer.

2 Q. How long have you followed that profession, and on what works have you been employed?

A. Between fourteen and fifteen years. I have been employed on the Erie canal, the Delaware and Hudson canal, the Mohawk and Hudson rail-road, and the Saratoga and Schenectady rail-road. On the two latter works I was and now am the principal engineer.

3 Q. Have you examined Mr. Hutchinson's maps and field-books of the survey of the Champlain canal, now before the committee?

A. I suppose it is the book I have seen here in the committee room. I have looked at a few pages of it only, and cannot say I have examined farther than to ascertain the plan upon which the survey was conducted, but not sufficient to give the details.

4 Q. Have you in like manner examined Mr. Trumbour's field-notes and rough maps, and do you understand the principle upon which the two surveys have been made?

A. I have examined some of Mr. Trumbour's field-notes that have been shewn me here, and looked over a sample of his field-book, shewn me by him, and which is marked Exhibit I, 3d May, 1832, and also some of his rough maps, and from the examination I suppose I understand the principles upon which both surveys are made.

5 Q. To which plan of survey do you give the preference; what are your reasons for the preference?

A. Where I have done surveying of that kind, I have always adopted the plan of a base line and offsets, as pursued by Mr. Hutchinson. I have given it a preference. I have thought there was greater accuracy obtained by that plan in getting a correct measurement of the base line of the ground occupied, as the measurement is generally less obstructed by irregularities of ground, and affords a more convenient reference to ascertain the lines of a canal or similar works at a future day.

6 Q. Would not a survey of the Erie canal upon Mr. Trumbour's plan be subject to a great many difficulties from marshes, swamps, woods, thick brush, uneven land and other obstructions in the line of the outward boundaries of the canal?

A. There are many obstructions of that kind in the line of the canal which I should think would increase the difficulty of making accurate surveys.

7 Q. Would not an accurate survey upon Judge Trumbour's plan be extremely difficult, if not impracticable, in many places along the line of the Erie canal where the foot of the slope or out-bounds of the towing path, embankment or wall, is in the channel or deep water of an adjoining river, for instance, Niagara river, and in crossing rivers and large streams, also in many places along the Mohawk river, as at Little Falls, Devendorf Hill, at the Great and Little Nose, and many other places?

A. I should consider it impracticable to run a line along the out-bounds in many places. I am not particularly acquainted with the Niagara river. At the Little Falls and Devendorf Hill, the Great and Little Nose, and several other places at which I am acquainted, I should think it impracticable to run a traverse line along the out-bounds.

8 Q. How would you make the survey in such cases?

A. I should do it by making offsets and running the line on that part of the work, where it was practicable, and from that line make offsets to the exterior bounds of the canal.

9 Q. (By the committee.) How are the offsets made on Mr. Hutchinson's plan?

A. According to the plan as described; where it occurs at an angle in the base line the angle is bisected, at other places at right angles with the bases.

*Cross-examined by Counsel for Judge Trumbour.*

10 Q. Is not the foot of the towing path embankment at the places to which you have referred on the Mohawk, and where you say

it is impracticable to run the out line in the stream or bed of that river?

A. Yes.

11 Q. Is not the method of making an offset in the line which you have stated, the proper one to be pursued in those places, the usual mode adopted by surveyors where any insurmountable objects, as a stream or pond of water occurs in the course of a line?

A. I consider it so.

12 Q. When the offset is made at such places in the manner by you suggested, may not the survey of the canal there, be then as correct and perfect as if made upon the plan of Mr. Hutchinson?

A. I should think so.

13 Q. What surveys have you made upon the plan adopted by Mr. Hutchinson? For what purpose, under whose and what directions?

A. I surveyed a section of the Erie canal under Judge Wright, then engineer, for the purpose of ascertaining the quantity of land to aid the Appraisers. I also superintended the surveys of the Mohawk and Hudson rail-road, as chief engineer, under the directions of the directors, to ascertain the quantity of land required for the work, and to construct maps as required by the charter; and also the Saratoga and Schenectady rail-road, for the like purpose.

14 Q. In making those surveys, did you take the course of your offsets on the ground, and set stakes or monuments at their extremities; and what permanent objects did you note along the base line or upon the out lines?

A. The offsets were taken at right angles, with the base line; where there was an angle in the base line at the offsets, the offset was taken at right angles, with the course last run; we set stakes at the angles in the exterior line in improved lands. All permanent objects were noted on the base line, and offsets were taken and noted to such other permanent objects as were within the exterior lines, such as locks, waste-weirs, aqueducts, bridges, and buildings, if any occurred on the canal. I also noted in my survey, all buildings on the exterior lines, and took the entire position of the buildings, so as to be enabled to designate it on the map, as it stood on the ground, and noted what portion of it came within the ground taken by feet and decimal parts. In making the offsets on the ground, we took the courses by the compass.

15 Q. Does Mr. Hutchinson's plan of survey designate on the ground where the exterior bounds of the State property are, or merely furnish data by which those exterior bounds may, by measurement, be ascertained?

A. I do not recollect observing that there was any thing said about setting monuments or stakes in the out bounds; nor do I recollect whether that was a part of his plan or not. I did not observe any thing of that kind in the description of his plan of survey. If no stakes or monuments were set, it could not be known on the ground that any survey had been made, the survey would give the means of ascertaining the quantity of land taken, without setting any stakes or monuments, but it would not designate on the ground itself,

the bounds of the public land along the canal, to ascertain that a new measurement of the ground would be necessary.

16 Q. Can you, from Mr. Hutchinson's survey map and field-book, or either of them, ascertain, without further measurements on the ground, how many feet and inches, or chains and links, any buildings along the canal encroach upon the State property?

A. Not without it is described in the field-book.

17 Q. (By the committee.) Does the field-book contain any such description?

A. I have not noticed any description in reference to buildings in the field-book, but there may be such entries contained in it. My examination of it has been brief. In examining some cases upon the first sheet of the atlas of the survey of the Champlain canal by Mr. Hutchinson, I think it would be necessary to take a measurement on the ground from some offset to ascertain the encroachment.

18 Q. Will you look at part first, chapter nine, title nine, section four of the Revised Statutes, and then state which of the two surveys, that of Mr. Trumbour or that of Mr. Hutchinson, you, as a surveyor, consider most conformable to the requirements of that section?

A. I do not think that I am so well qualified to judge of that, not being in the habit of land surveying for the purpose of ascertaining boundaries, as those who are more familiar with that branch. I don't know that theoretically there would be any thing to choose between the two plans, as to ascertaining the boundaries. All objects proper to be referred to in the boundary, could be taken in either plan.

19 Q. Upon the plan of the field-book and maps submitted, which survey does in fact most clearly and fully designate, by the maps and field-books, the exterior boundaries of the parcels of land taken by the State for the use of the canal?

A. I am not sufficiently acquainted with the two plans to be very decisive on that subject; but from what I have seen from the samples produced, there is more fullness in Judge Trumbour's specimens of field-book submitted, and should rather give it the preference over that of Mr. Hutchinson's, submitted to me at the same time; being that of Buffalo on the part of Judge Trumbour, and that of Whitehall on the part of Mr. Hutchinson.

*Thursday, 9th May, 1832. 4 o'clock, P. M.*

IN COMMITTEE—Present, Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND, *Chairman.*

The memorialists and their counsel are also present.

*Mr. Jervis* further examined on the part of Mr. Hutchinson.

20 Q. From further examination of the field-notes of Judge Trumbour, do you think the case at Buffalo, referred to in your last answer, a fair sample of the field-book to be compiled from his field-notes?

A. I cannot say whether the further field-notes which have been shewn me here, as a means of comparison, would be sufficient to make a field-book of the character of the specimen above mentioned. There are instances here where the notes are very few. It would be necessary to be acquainted with the country, and know what there is to be put down. There is a long course here of 187 chains and 14 links, with very few notes; perhaps there were no objects to put down: It is a little west of Lockport. These remarks apply to the notes of the berm side of the canal. I have also examined the field-notes of Judge Trumbour's survey, on the towing path side. In some places, for several miles together, the notes are quite numerous; and then, for a like distance, they are very few; the cause of which is naturally supposed to be, that there were few objects to note—in reference to the long course on the berm side above mentioned. The remarks are about the same in number on the tow-path side, as on the berm side.

21 Q. Will you read to the committee the remarks in Judge Trumbour's field-notes, on both sides of the canal, in the long course above referred to?

A. Note, on the towing path side, N. 26 E. 184 29.

Station 31, offset  $\angle$  wy. 56 feet St. 31.

At 14 20, first bridge.

At about 80 ch. town line between Pendleton and Lockport.

At 148, commt. of blasting.

At 167, bridge.

These are the notes on the tow-path side of the long course.

On the berm side, as follows: N. 25 $\frac{1}{2}$  E. 187 14 to St. 1.

At about 80 ch. town line between Pendleton and Lockport.

All along, heaps of rock, and canal cut through rocks from 20 to 30 feet deep; then along foot of canal.

22 Q. What would be the departure of an angle of one-fourth of a degree, at a distance of  $2\frac{1}{2}$  miles?

A. About seventy-eight links, or fifty-one and a half feet.

23 Q. Are stakes of two feet in length, set at each station, permanent objects; and could a reference to them be relied upon, even a short time after they were so set?

A. I should not consider them very permanent. They might be relied upon as long as they remained, but they are liable to be removed.

24 Q. Is the water edge as good an object of reference, as the inner edge of the towing path of the canal?

A. It would not be as good, unless the water was kept at a uniform elevation.

JOHN B. JERVIS.

Sworn and taken in committee, }  
May 9th, 1832. }  
J. HAMMOND, *Chairman*.

(No. 20.)

*Walter Osborn's Deposition.*

IN COMMITTEE—Present as before.

*Walter Osborn*, a witness, produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows :

1 Q. Have you at any time been superintendent on the Erie canal ; if so, how long and at what place, and what portion of the said canal was under your charge ?

A. I was appointed superintendent in June 1826, and discharged the first of April 1831. The first year I had charge of the Erie canal, from Buffalo to Pendleton lock, a distance of twenty-four miles ; and in 1827 and 1828, my route was extended to the locks at Lockport, making thirty-one miles ; and in 1829 and 1830, my route was extended to Medina Oak Orchard creek, a distance of forty-nine miles.

2 Q. Have you had opportunity and occasion to notice the variations of the inner edge of the towing-path from time to time, and have you noticed any such variations ; state particularly ?

A. I have had occasion to notice the towing-path particularly, and the variations of it near Buffalo is very great, or rather being sand, it is washed all away pretty much, so that they have in one place moved it back the whole width of it, for a distance of thirty or forty rods at that point ; also on the Tonewanta creek, the tow-path is varied and very much washed in places ; not being walled nor timbered, when the creek rises it soaks the banks, and in many places they are washed away half the width of the towing-path ; also along the Niagara river, not being walled nor timbered, it is varied considerably, the banks being washed away ; from Black Rock lock to Pendleton, distance of twenty miles, there is not to exceed a hundred rods of the banks secured by any wall or covering ; the towing-path of this part of the canal is most liable to wear. That below the locks at Lockport, and forward to Oak Orchard creek about eighteen miles, being timbered or walled the most of the way. There have been slides on the mountain ridge west of Lockport, between that place and Pendleton, which have varied the original face of the canal bank on the berm side, from two to four rods, and for twenty or thirty rods in length ; on the towing-path side, the variation is not so much, this is where the cuttings are deep ; the banks having slid in from time to time, in some instances obstructing the navigation. The whole of the towing-path has slid from four to five feet, and there is a crook on the inner edge of it to that extent, for the distance of something like ten rods. These are the material alterations that are on that section of the canal that have come to my knowledge.

3 Q. Have the repairs of the towing-path, so far as you have observed, in all cases restored its inner edge to its original shape and position ; state particularly your knowledge upon that subject ?

A. In timbering the face of the banks, I have been instructed by Mr. Bouck, the Canal Commissioner, to place it as near to the bank as it then stood as could be well done, to avoid the expense of bringing earth to fill it up as it originally was, which I did.



4 Q. Is the angle of the inner edge of the towing-path generally preserved, or is it worn off by the treading of men and beasts by raia and by the wearing of the towing-lines or other causes? State its situation as particularly as in your power.

A. It has worn off particularly at those places where it has not been walled or timbered.

*Cross-examined.*

5 Q. In the slide alluded to by you west of Lockport, do you intend to say that the berm side or towing-path has removed from two to four rods, or do you wish to be understood that the slopes in the deep excavation out side of those banks have so removed?

A. As respects the towing-path side, the top water line in the canal has varied about four feet for the distance of some ten rods; as to the berm side, the variation alluded to, is in the face of the outer bank, the water line is where it was. The berm bank and all have slid down. The cutting is as deep on the berm side as on the other.

6 Q. Where you placed the docking timbers between Lockport and Oak Orchard Creek, did you thereby materially vary the inner edge of the towing-path.

A. Not being particularly acquainted with the original line of the inner edge of the towing-path, I could not determine its original location, the banks being worn; but in timbering the inner edge of the towing-path we left the canal a little wider, as we could not well get up to it, and to save expense in filling up what was chafed away.

7 Q. Did you there leave the inner edge of the towing-path about in the same place where you found it?

A. I did.

8 Q. Are not some parts of the towing-path very nearly where it was originally made, so that you could with great certainty ascertain its original location in those places where it has varied?

A. I think the original line might be ascertained very nearly.

9 Q. What proportion of the stakes set by Judge Trumbour when he made his survey is now standing?

A. My business for the last year has not been on the canal. I cannot say what proportion of them are now in general remaining; but along my land the most of them are remaining, and I feel an interest in keeping them up, that I may know how far the State claims?

10 Q. How many buildings are there encroaching within the line of the out bounds of the State property between the Tonewanta creek and the west bridge at Lockport?

A. Not any to my knowledge. I do not mean to include the village. The distance is about six miles.

11 Q. How many between Pendleton village and Tonewanta village?

A. I know of one large building, a store-house at Pendleton village, that now stands within the line. I do not recollect of any between the villages; but there is a log dwelling-house at the point of the Eleven Mile creek that encroaches within the line.

12 Q. How many between Black Rock and Tonewanta village?



A. There is also a large unfinished store-house at Tonewanda near the lift lock, that encroaches some ten feet within the line.

13 Q. How many between Black Rock lock and Tonewanda village?

A. There is none to my recollection.

*Further examination on the part of Jacob Trumbour.*

14 Q. Are the cases of encroachments on the line of the State property of frequent occurrence along the line of the canal, except those places?

A. I am not acquainted except on the routes of which I had charge. I know of a number along that part of the canal?

WALTER OSBORN.

Sworn and taken }  
in committee. }

J. HAMMOND, *Chairman.*

(No. 31.)

*Jonas Earll junior's Deposition.*

The Committee met—12th May, 1832. Present as before.

*Jonas Earll, Jun.* a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows:

1 Q. Are you an acting Canal Commissioner, and how long have you been so? Were you appointed in the place of Henry Seymour, after his resignation?

A. I am an acting Canal Commissioner, and have been since May, 1831. I was appointed in the place of Henry Seymour after his resignation.

2 Q. Have you any papers, books or documents within your possession or control, relating to the survey of the canals under the Revised Statutes? If so, produce them.

A. I have a proposition of Holmes Hutchinson to make the survey of the canals, which was delivered to me by Henry Seymour, which I now produce. [Marked exhibit L, in committee, 12th May, 1832. The following is a copy:]

*"To the Honorable, the Board of Canal Commissioners.*

*"Gentlemen—I propose to make the survey, field notes and maps of the canals now constructed in this State, the Erie, the Champlain, the Oswego, and the Cayuga and Seneca canals, and all the lands connected therewith, as contemplated by article first, chapter 9, title 9, of the Revised Laws, for the sum of four thousand dollars, on condition, however, that the Canal Commissioners will allow me a further sum, not exceeding the appropriation, provided it should cost me more than the above sum of four thousand dollars, and that I can make it appear satisfactorily to them that such is the case.*

*"HOLMES HUTCHINSON.*

*"Feb. 14, 1829.*

*"Accepted by the Canal Commissioners."*

[A. No. 335.]

It is the only paper or document I ever had in my possession relating to the survey of the canals, according to my best recollection.

3 Q. Have you any books or entries within your possession or control, giving a description of the lands taken for the use of any of the canals?

A. I have none.

4 Q. Do you know of any such, except such as may be in the Comptroller's office, canal room, or in the hands of the secretary of the Canal Appraisers?

A. I know of none other, except a book which I have once seen in the possession of Henry Seymour, which had some entries of canal appraisals in it; but whether it contained any description of the lands appropriated for the canal I cannot say.

5 Q. Do you know where the last mentioned book now is?

A. I saw it in the month of September in the possession of Henry Seymour. I have not seen it since, and I do not know where it is.

6 Q. Do you know which of the members of the Canal Board drew the report of that Board contained in the printed documents relative to this matter, dated March 6th, 1832?

A. That report was principally drawn by William C. Bouck; other members of the Canal Board made alterations or suggestions on which alterations were made when the paper was before the Board. The Surveyor-General was one of the members who had alterations made in it; they were principally made at his suggestion.

7 Q. Had you at the time any personal knowledge of any of the facts stated in the said report? If so, state what fact.

A. The knowledge that I had of the facts stated in that report was from conversations had with Mr. Trumpbour, Mr. Hutchinson, the members of the Canal Board, and the documents before the Board at the time the report was drawn. This was all the knowledge I had of the facts.

8 Q. Was the letter (marked Exhibit M, 12th May, 1832, in committee,) written and sent by you to Jacob Trumpbour, at or about the time it bears date, and the facts therein truly stated; of which the following is a copy:

*" Onondaga, August 3d, 1831.*

" Dear Sir—As you particularly requested me to inform you by letter whether any thing was done or not, by the Canal Board, at their meeting on the 28th of July last, in relation to the survey of the canals, I now inform you that the Board did not make any order upon that subject. Some of the members of the Board intimated that no order would be made by that Board until a map and field notes were submitted, as required by law, and that they considered it the duty of the Canal Commissioners to have the surveys and maps made.

Yours, with respect,

" JONAS EARLL, Jr.

" JACOB TRUMBOUR, Esq."

A. The letter was written by me to Mr. Trumpbour, I presume about the time it bears date, August 3d, 1831. Jacob Trumpbour

had called on me sometime before that, and had a conversation in relation to the survey of the canals.

*Cross-Examined.*

9 Q. Will you state the conversation alluded to by you as had with Mr. Trumpbour, which induced you to write that letter?

A. Sometime in the month of July, 1831, Mr. Trumpbour called on me, and we had a conversation in relation to the survey of the canals. He informed me there had been some difficulty in relation to those surveys, and that he had presented a memorial to the Legislature at the previous session, and gave me a copy of it. I then informed him that the subject was new to me; I knew but very little about it; but there was to be a meeting of the Canal Board the latter part of that month; that at that meeting I should have conversations with the Canal Commissioners and other members of the Canal Board in relation to that survey. He then informed me that he was going west, and requested me to write to him and direct the letter to Weedsport, Cayuga county.

10 Q. Did you subsequently hold a conversation with Mr. Trumpbour relative to the survey of the canals; if so, what was its purport?

A. Mr. Trumpbour called upon me after I had written this letter, some time in the month of August. He was then returning from the west, as I understood. I inquired of him if he had received my letter. He said he had not. He inquired of me if there had been a meeting of the Canal Board. I informed him there had. He inquired what had been done in relation to the survey of the canals. I told him the Board had declined acting on that subject until a survey was submitted by the Canal Commissioners, and that the Canal Commissioners had told Mr. Bouck to call upon Mr. Hutchinson to go on and complete the surveys of the canal, as they considered him the man to whom they had to look for the completion of the surveys. After this conversation took place, he intimated his dissatisfaction with the proceedings of the Canal Commissioners, and that he should apply elsewhere for redress, and alluded to the Legislature, or something of that purport.

JONAS EARLL, Jr.

Taken and sworn in committee }  
the 12th May, 1832. }  
J. HAMMOND, *Chairman.*

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(No. 22.)

*John Kiersted's Deposition.*

IN COMMITTEE—Present, as before.

*John Kiersted*, a witness, produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Are you a practical and professional surveyor, and how long have you been so?

A. I commenced a pupil with William Cockburn in 1800; since which I have been a practical surveyor.

2 Q. Have you examined the respective plans of survey adopted by Jacob Trumbour and Holmes Hutchinson, in surveying the canals of the State, together with their respective maps and field books?

A. I have so far as they are here exhibited.

3 Q. Will you look at part first, chapter nine, title nine, section four, of the Revised Statutes, and state to the committee which of the said plans of survey you, as a surveyor, consider most conformable to the requirements of that section, and the reasons of your opinion?

A. I have examined that section of the act, and in my opinion it requires an actual survey on the ground of the State land along the canals, and a written description by metes and bounds, courses and distances, in the usual manner; and had I been called on to make the survey, I should have so performed it. I do not conceive the survey of Mr. Hutchinson to be conformable to the requirements of the act, because it gives no actual location on the ground by metes and bounds of visible monuments, designating the division lines between the lands of the State and those of individuals: because also, his manner of taking offsets without taking the course of them by the compass, is, in my judgment, too loose for any survey. Besides, his leaving the course and distance of the outlines to be ascertained by calculation, and depending upon the offsets thus taken, not only requires great additional labor to make those calculations, but renders the outlines very uncertain. I should prefer Mr. Trumbour's plan of survey, for the following reasons: Mistakes may and often do occur in taking courses and measuring distances, and making entries on the field notes. A line run on each side of the canal, with occasional check lines across, with the courses and distances, afforded infallible means of detecting errors, as the survey progressed. No such check, nor any other check that I have been able to discover, is afforded by the plan of Mr. Hutchinson. Besides, I consider it very difficult, if not impracticable, from Mr. Hutchinson's map and field notes, to give an apt or intelligible description of the lands set apart from the several lots or farms of individuals. Mr. Trumbour describes the out bounds of the State property, by courses and distances, giving permanent monuments at every necessary and convenient place, such as locks, waste-weirs, bridges, culverts, aqueducts, basins and buildings, and defines the lines upon the ground by actual survey and measurement. He notes with precision all encroachments by individuals on the property designated as the State property; and his field notes furnish the means of making the required maps and descriptions precisely as he found things on the ground. The survey maps and field notes upon his plan, enables the agents of the State and the owners of private property to locate with precision at present, and to ascertain the lines hereafter, in case visible monuments or boundaries should be lost.

4 Q. What, in your opinion, is the comparative expense and labour of executing the survey upon the different plans of Mr. Trumpbour and Mr. Hutchinson, including the returns of field books and maps?

A. I should say the manner in which Mr. Trumpbour has done his, would be double that of Mr. Hutchinson's; and I do not know but that it would be more.

5 Q. What is the probable value of making fair returns, field books and maps of Judge Trumpbour's survey?

A. I have made no particular calculation on it; to do it after the manner he proposes, I should say it is worth from twelve to thirteen hundred dollars, taking that part of the canal surveyed by him.—This estimate does not include the cost of the survey and rough maps.

*Mr. Kiersted cross examined on the part of Mr. Hutchinson.*

6 Q. What was the design of the Legislature in passing the act of 1827, for surveying the canals; the fourth section of which you have before alluded to?

A. The object of it appears to be, to have a complete manuscript map and field notes of the lands belonging to the State adjacent to the canals, and requires a survey for that purpose, and a record thereof to be made; to do this, the survey must designate the location by proper boundaries, together with the names of the former owners.

7 Q. Does that part of the act referred to, which requires the boundaries of every parcel of such land to which the State have a separate title, to be designated, and the names of the former owners, and the date of each title to be entered, refer to those parcels of land only which have been purchased, and the titles to which are in the Comptroller's office? or does it, in your opinion, refer to all the lands taken by the State for the use of the canals?

A. In my opinion it refers to all the lands taken for the canals.

8 Q. In determining hereafter the location of the outlines of the State property, upon which would you place the principal reliance, upon the courses of the lines as obtained by the compass, or upon offset to the canals?

A. Upon both where they were given or taken as permanent monuments.

9 Q. Upon which line along the canal can most reliance be placed for permanency—the water's edge or the inner edge of the towing-path?

A. Whenever the banks are perfectly sound or permanent, either of them might do to refer to; but generally speaking they are uncertain. Neither of them are very safe by reason of the continued washing of the water. I should think there is very little difference in their permanency.

10 Q. Is there any difficulty where two courses of a line forming an angle are given, in telling which course a line would run to bisect that angle.

A. To an experienced surveyor there probably would be none, but young surveyors would be very liable to make mistakes.

11 Q. For purposes of ordinary certainty, would there be any necessity to use a compass on the ground to bisect the angle where the offset or bisecting line does not exceed fifteen or eighteen feet in length?

A. I think there is. I would always advise the use of the compass in such cases, whether the distance be long or short.

12 Q. What uncertainty would there be in outlines ranged from the extremities of the offsets, where they are taken from a level base line, the angle on the base line correctly bisected, and the offsets measured?

A. The course could be calculated from one point to the other, but it leaves it all uncertain by reason of no monuments being set at the extremity of the offsets.

13 Q. Do you understand that Judge Trumpbour, in his survey, has set permanent monuments in every angle of his outlines; and if so, what are those monuments?

A. I have observed that in several cases he has taken corners of houses; at some he has set stakes, and at others he has taken offsets to permanent monuments.

14 Q. Do you undertake to say that there are no mistakes in Mr. Trumpbour's survey, or that there are mistakes in Mr. Hutchinson's?

A. I do not.

15 Q. Would not the keeping tally of the measures by the surveyor and two other persons at the same time, serve to prevent mistakes?

A. It might, especially if each of them kept minutes, as mistakes occur in noting down the measure, as well as in other parts of the work.

16 Q. If the check lines are five miles from each other, and twenty-five or thirty stations or angles in the outlines occur on each side between the check line and the farm to be measured, would not the calculation to ascertain the metes of a farm be as much on Mr. Trumpbour's plan as Mr. Hutchinson's.

A. It would require considerable calculation, but it may be done by taking the latitude and departure of the courses and distances. The calculations may in the case supposed be as much in the one plan as the other. If there are five offsets on Mr. Hutchinson's plan, the calculation would not differ much from the case put in the question.

17 Q. Suppose a person in Washington county had obtained from the Comptroller's office an abstract from Mr. Hutchinson's survey of the canal through his farm, and that abstract furnished you, in which were given the courses and distances of the base line along the inner edge of the towing-path through the farm; the length of the offsets on each side of the base line bisecting all the angles; the lengths of the offsets taken at right angles with the base line, where there was no angle in it, and the distance at which the said last offset is taken, is noted on the base line, and the courses of the lines of his farm where they intersect the base line, would you



have any difficulty in going on to the ground and setting stakes in the outlines of the land taken for the canal, without the survey of these outlines?

A. I could set stakes to correspond with such courses, distances and offsets, provided there was no changes in the inner edge of the towing-path.

18 Q. Should such an abstract be sent you at home, would you have any difficulty in calculating the quantity of land taken from the individual's farm without a further survey?

A. It could be calculated. It makes the calculation difficult, however, to have the courses and distances given in the middle, and all the outlines to be ascertained by computation.

19 Q. When you had computed the contents, would you have any difficulty in giving the courses and distances of the outlines without going on the ground?

A. If the survey was correctly taken, it might be done in the same way by calculation; but it would be a mere matter of calculation.

20 Q. Could you do the same in a similar case with Mr. Trumbour's survey where he had given no check line at all?

A. I could not, if no check line at all were given.

21 Q. Have you, as a surveyor, had any experience in surveying canals or lands adjoining them?

A. I have surveyed lands adjoining the Hudson and Delaware canal, and lands adjoining the Northern or Champlain canal; but have no experience in surveying canals.

22 Q. (By the committee.) What difference is there in the principles of the science of surveying, as applied to lands adjoining canals, and other lands?

A. I do not know of any. The principles are all the same so far as I know.

23 Q. (By the committee.) Is the science of surveying canals a distinct or separate science from that of surveying lands, or is it performed upon the same principles?

A. I presume it is upon the same principles; I know of no other.

24 Q. (By the same.) Which would be the most labor, to make the metrical calculations concerning which you have been interrogated, or to make the actual survey on the ground, by the usual means?

A. I had rather make the actual survey on the ground, than to make the calculations on Mr. Hutchinson's plan.

*Question direct, on the part of Mr. Trumbour.*

25 Q. When Mr. Trumbour's map and field books are completed according to his plan and sample of field book furnished the committee, will any calculation be necessary to ascertain the description, metes and bounds of any parcel of land taken from an individual for the use of the canal?

A. No; his map and field book, when completed upon his plan, will shew all those matters; every course and distance will be given.

*Cross-examination on the part of Mr. Hutchinson.*

26 Q. Does Mr. Trumbour's sample of field book, so far as it is made up, give the courses and distances of the outlines of each piece of land taken from individuals for the use of the canal?

A. As far as I have read, it does.

27 Q. How many owners are named on that sample, and what are their names?

A. Prime, Ward & Sands, Elisas Hubbard, Ebenczer Johnson and Samuel Wilkeson, and the Holland Land Company.

28 Q. Will you give me the courses and distances around the land taken from Prime, Ward & Sands.

A. Beginning on the northerly side of the Buffalo creek, bearing S.  $32^{\circ} 30'$ , E. 1c. 49l. from station 1, place of beginning on the northerly side of the canal or basin; and also bearing S.  $53^{\circ}$  W. 61l. from the S. W. corner of George B. Webster's store, and runs thence N.  $61^{\circ}$  E. 1c. 81l., distant 12 feet from canal or basin; thence N.  $43^{\circ} 30'$  E. 7c. 47l.; thence N.  $82^{\circ}$  E. 22l.; thence S.  $50^{\circ}$  E. 4c. 37l. to Main-street, the easterly bounds of Prime, Ward & Sands; thence N.  $15^{\circ}$  E. 12 feet, to the canal or basin on Little Buffalo creek; thence along Little and Big Buffalo creek, as they wind and turn, to the place of beginning.

JNO. KIERSTED.

Taken and sworn in committee, }  
May 16, 1832. }

J. HAMMOND, *Chairman.*

(No. 23.)

IN COMMITTEE—Present, as before.

*James Cockburn's Deposition.*

*James Cockburn*, a witness produced on the part of Jacob Trumbour, the memorialist, being sworn, deposes as follows:

1 Q. Are you a professional and practical surveyor; and if so, how long?

A. I am, and have been thirty-five years.

2 Q. Were you with Jacob Trumbour when he was making his survey of the Erie canal? If so, when and where, and did you observe his plan of survey?

A. I was with him on the section of the canal at Port Byron, I believe in June 1829, and did observe his plan of survey.

3 Q. Have you examined the respective plans adopted by Jacob Trumbour and Holmes Hutchinson, in surveying the canals of this State, together with their maps, field notes and field books, so as to understand the different plans?

A. I have, and believe I understand them.

4 Q. Which of those two plans of survey, do you, as a surveyor, consider most conformable to the requirements of the 4th section of



part 1st, title 9, chapter 9, of the Revised Statutes, and state the reasons of your opinion fully and particularly ?

A. I have examined that part of the act, and in my opinion it requires an actual location of the State property along the line of the canal, on the ground run and marked out, accompanying with the map and field book a particular description, with the boundaries of each man's lot by course and distance, in order to enable the State and the adjoining owners to know where their bounds are.

The survey of Mr. Hutchinson seems to me to be wanting in many places, according to my views on that subject. In the first place, the outer boundary lines of the State property necessary for the canal, have not been run on the ground, which would also enable him to determine the interference with buildings, &c. The courses and distances of those lines are not given on his map nor field book.

The objects he has noted in his field book, along the base line, afford no means to ascertain how far off the objects are to the right or left, excepting the quoin posts of the locks ; also erecting monuments at every exterior end of his offsets, for the State property, are necessary requirements, in order to complete the survey.

Whereas the survey of Mr. Trumbour presents to me, to have avoided all those objections, where the survey of Mr. Hutchinson is wanting, as above stated. If he has, as appears from his survey he has, run and marked out on the ground the outer boundary lines of the State property, for the use of the canal, accompanying with the map and field book, giving a particular description of the State property, by courses and distances, with monuments erected on the outer boundaries of the State property, their bearings to permanent objects, with courses and distances, their interferences with individuals' property on the outer boundary lines, such as buildings, &c. and he has also designated each parcel of land so taken for the use of the canal, from individuals, and noted all permanent objects along the canal, such as locks, aqueducts, culverts, waste-wiers, bridges and buildings, and wherever the accuracy of the survey required it, he has run check lines across the canal from one line to the other. And were I to have performed this survey, I should, in conscience, consider myself bound, in order to do justice to the people of the State of New-York, to have pursued the same plan of survey as now presented by Mr. Trumbour.

*Cross-examined on the part of Mr. Hutchinson.*

5 Q. Have you, as a surveyor, had any experience in surveying canals, or lands adjoining canals ?

A. I do not now recollect of any.

6 Q. What was the design of the Legislature in passing the act of 1827, for surveying the canals, to which you have alluded ?

A. I do not know that I can give any other answer, than such as is contained in my last answer in the direct examination.

7 Q. In determining hereafter the location of the outlines of the State property, upon which would you place a principal reliance, the courses of the lines as obtained by the compass, or upon offsets to the canal ?

[A. No. 335]

A. I should rely more upon the compass undoubtedly; the offsets would assist, if correctly taken.

8 Q. How would you restore Mr. Trumbour's small stakes, placed by him at every station, and described by you as monuments?

A. I would restore them by the means furnished by his survey.

9 Q. What are those means, and what instruments would you use?

A. I would be governed by his courses and distances, taken by the compass, and by references to permanent objects, which I would use to prove the correctness of the stations where stakes formerly stood. The usual instruments used in surveying, are compass and chain.

10 Q. What permanent monuments do you think it necessary to set at the angle of the exterior lines of the State property to conform to the requirements of the statute?

A. In surveys made of the State property, they have generally adopted stakes or trees; and I should suppose that in this survey, stakes at least, ought to have been set, where no permanent object was found.

11 Q. To insure accuracy in Mr. Trumbour's survey, how often are check lines required?

A. Much would depend upon the distances of the different angles. If the distances were short, perhaps it would require the check lines to be run oftener, as once in five miles, or once in ten miles, if long.

12 Q. How would you, on Judge Trumbour's plan of survey, give the courses and distances of the land taken from any individual for the uses of the canal, where no check line had been taken within the lines of his farm?

A. If the distance is not put down on the line, I should proceed to ascertain it by calculation; this might be done though the check line were a mile off.

13 Q. Could it be so done with accuracy, if the check line were five miles off?

A. I think it can.

14 Q. Would such calculation insure as much accuracy as if several transverse lines were measured and laid down on the farm?

A. I think it would.

15 Q. Could you, from Judge Trumbour's map and field notes, give the courses and distances of any such piece of land where no such check line is given, without going beyond the limits of the farm for data?

A. I don't know that I can, but the field notes and map afford abundant means to ascertain the course and distances, though some of the data may be beyond the farm.

16 Q. What is the present variation of the magnetic needle, from the true or astronomical meridian, and is that variation east or west?

A. The last observation I made, it was five degrees and a quarter; I think the variation was west.

17 Q. Does it continue uniformly the same in the same place?

A. It continues varying; there is a yearly and daily variation.

18 Q. Can you, from the map and field book of Mr. Hutchinson, give the courses and distances of the land taken from the farm of any individual, for the uses of the canal, where he gives the courses of the lines of the farm across his base line, the courses and distances of the base line, and the length and angles of his offsets?

A. If you will shew me a case in Mr. Hutchinson's map, where the courses and distances are given in the case required to be answered, I will tell you whether it can be done or not. On inspecting the map, the witness says it can be done by metrical calculations I think, with great care and caution. I would as soon run the lines on the ground as make the calculations.

19 Q. Will you look at Judge Trumbour's field notes, and tell the committee how many check lines are there noted in his survey, between the tow-path bridge at Pendleton, and the village of Lockport?

A. I am not exactly able to determine these points, and cannot say whether there are three or four.

20 Q. Point out in the field notes, each of those cases, and the words and figures by which they are noted?

A. The first is N.  $45\frac{1}{2}$  E. 151 feet to Beg. St. 2.

The next is S.  $69\frac{1}{2}$  E. to Beg. St. 30, 56 } feet across.  
39 }

The next is N. 26 E. 184 29 feet.

St. 31  $\angle$  Ely. 56, St. 31.

21 Q. From station thirty, east of Pendleton, in Trumbour's field-notes, how far is it going easterly to the next check line, and how many stations intervene?

A. Nine stations and three hundred thirty-four chains, so far as I have discovered.

22 Q. From station number thirty, going westerly, how many stations to the next check line?

A. I do not know; I have not discovered any until station two, but there are many offsets, and division lines of farms noted.

23 Q. Does not the base line of Mr. Hutchinson's survey pass directly across waste-wiers, aqueducts, bridges and culverts in such a manner as to make a reference to them by courses and distances unnecessary, and are not their intersection noted on the base line?

A. I should say, that the courses and distances are necessary to be noted, in order to determine the angles, especially if dependance is to be placed on the base line for any purpose, as it is. I cannot determine the location of the base line, whether it is justly on the edge or not; the line may not cut the edge of the waste-wier, especially if there is a curve in the canal; it is the same in respect to aqueducts and bridges. The distance to waste-wiers, aqueducts and bridges, are noted by Mr. Hutchinson on his base line when he passes them, but no distances are noted how far to the right or left of the line those objects lie or extend.

24 Q. (On the part of Jacob Trumbour.) Is there any reference in Mr. Hutchinson's map or field-book to bridges, waste-wiers, aq-

ducts or culverts, that can aid any future surveyor in determining the course or location of the base line in relation to those objects?

A. There is not so far as I have been able to discover.

*Further examined on the part of Mr. Hutchinson.*

25 Q. How near to the parts of a degree are you in the habit of taking courses in your survey?

A. Where we are not bound by any particular course, we do not take the parts less than a quarter of a degree. But if there is a particular course, we run by degrees and minutes, and note it exactly.

JAMES COCKBURN.

Taken and sworn in }  
the committee. }

J. HAMMOND, *Chairman.*

(No. 24.)

*John T. Vernor's Deposition.*

IN COMMITTEE—May 17, 1832.

Present, Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND.

The memorialists and their counsel.

*John T. Vernor*, a witness produced, sworn and examined on the part of Jacob Trumpbour, deposes as follows:

1 Q. Are you a clerk in the Comptroller's office of this State, and have you charge of the Canal Room?

A. I am, and have such charge.

2 Q. Are there in that office any books or documents containing an apt or other description of the lands taken from individuals for the use of the canals, or any books furnished by the Canal Commissioners or Canal Appraisers, containing such descriptions, or relating to the appraisal of damages, except those now before the committee?

A. I do not know of any other book or documents of the kind referred to.

JNO. T. VERNOR.

Taken and sworn }  
in Committee. }

J. HAMMOND, *Chairman.*

(No. 25.)

*Jacob Chambers's Deposition.*

IN COMMITTEE—16th May, 1832. Past 6 P. M.

Present, Mr. M'DONALD,  
Mr. HOGEBROOM,  
Mr. HAMMOND, *Chairman.*

The Memorialists, Mr. Cheever and Mr. Livingston.

*Jacob Chambers*, a witness produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows :

1 Q. Are you a practical and professional surveyor ; and how long have you been so ?

A. I am, and have been so about thirty-five years.

2 Q. Have you examined the respective plans of surveys adopted by Jacob Trumpbour and Holmes Hutchinson, in surveying the canals of this State, together with their respective maps and field-books ?

A. I have.

3 Q. Will you look at part first, chapter nine, title nine, section four of the Revised Statutes, and state to the committee which of the said plans of survey you, as a surveyor, consider most conformable to the requirements of that section, and the reasons of your opinion ?

[Adjourned to 17th May.]

IN COMMITTEE, 17th May, 1832.

A. According to my opinion, Mr. Trumpbour's plan is most conformable to the letter of that act. The law appears to contemplate, that the land belonging to the State, adjacent to the canals, should be set apart by boundaries, which I consider ought to be done by actual survey ; which, according to Mr. Trumpbour's plan, is to locate those lands on the ground by metes and bounds. Whereas, on the contrary, I do not think, from the understanding I have of Mr. Hutchinson's plan, the survey will make out such boundaries as are contemplated in that section.

4 Q. Are you well acquainted with Jacob Trumpbour, and with his situation and usual business ; and if so, how long ?

A. I have been acquainted with him about thirty years. He is generally employed as a surveyor, and does a good deal of business of that kind.

5 Q. What is his character and reputation as a surveyor ?

A. Uniformly good.

6 Q. Is he, or not, generally esteemed as one of the most competent and accurate surveyors in the State ?

A. He is so by me, and I believe generally in that part of the State where I reside.

7 Q. Has he usually, during your acquaintance with him, found pretty constant and profitable employment in that business ?

A. I believe he has.

*Cross-examined on the part of Mr. Hutchinson.*

8 Q. So long as the inner edge of the towing path of the canal, adopted by Mr. Hutchinson as his base line, remains unchanged, or can be restored, will there be any difficulty, with the aid of Mr. Hutchinson's map and field-book, in going on to the ground and staking out the outbounds of the land taken from any individual for the use of the canal?

A. If the map represents the survey exactly as it is taken on the land, I presume there would be no great difficulty; but some calculations would be necessary. A compass would be requisite, to bisect the angles and determine the offsets. Where the line was a perpendicular from the base, no calculation would be required; but chain and compass would be necessary. If there were any obstructions, so that one could not see from one station to the other, the line must be ascertained by measurement. On Mr. Trumbour's plan, where the view from one station to the other was obstructed, the courses and distances must be ascertained by the compass.

9 Q. Does that part of the act referred to, which requires the boundaries of every parcel of land, and to which the State has a separate title, to be designated; and the names of the former owners, and the date of each title, to be entered; refer to those parcels of land only which have been purchased, and the titles of which are in the Comptroller's office; or does it, in your opinion, refer to all the lands taken by the State for the use of the canals?

A. I think it includes all the land belonging to the State, appropriated for the use of the canals, along the line thereof.

10 Q. In determining hereafter the location of the outlines of the State property, upon which would you place the principal reliance, the course of the line as obtained by the compass, or upon offsets at the canal?

A. My reliance would be about equal, where there were permanent objects to start from. If there should be any difficulties about it, I would rely upon the compass. There might be some difficulty in relying upon the canal, or the water's edge might change.

*Direct examination resumed.*

11 Q. Does Mr. Hutchinson's map represent the survey exactly as it was taken on the ground, or are the buildings therein delineated altogether imaginary?

A. I do not know, and cannot answer that question; but I presume the survey was made as it is represented. There are lines in his map, however, which I understand are not pretended to have been run; the outbounds are understood to have been obtained from the offsets. If the survey of the base line was correctly run, and the angles bisected, it would produce those lines.

12 Q. Where the inner edge of the towing path is curving, can a straight line be run on it for any distance, so that the offsets can be taken with any degree of certainty?

A. I think not.

13 Q. Suppose the inner edge of the tow-path to vary, as it is liable to, how would you proceed to locate the outlines of the State lands, from Mr. Hutchinson's map and field-book?

A. I would go to some permanent object that he had noted in his base line, and run that line to the place where I wished to make the offset, agreeable to his courses and distances given in his survey.

14 Q. Is there any object of the kind to which you refer, noted in his field-book, or in his map, that can aid in ascertaining the location of the base line?

A. I do not see any other thing noted in figures or writing; but the map purports that the base line runs along the edge of waste-weirs or aqueducts, which appear on the map to conform with the inner edge of the towing path, and directly under bridges.

15 Q. Does the inner edge of the tow-path, under the bridges, correspond with the general course of the inner edge of the tow-path of the rest of the canal?

A. I do not know.

16 Q. Are there any variations in the course of the base line, on Hutchinson's map, at the bridges?

A. I do not see any.

JACOB CHAMBERS.

Taken and sworn in committee, on the }  
16th and 17th days of May, 1852. }  
J. HAMMOND, *Chairman*.

(No. 26.)

*Augustus Tremain's Deposition.*

IN COMMITTEE.—Present, as before.

*Augustus Tremain*, a witness, produced on the part of Jacob Trumpbour, the memorialist, being sworn, deposes as follows:

1 Q. Are you a professional and practical surveyor, and how long have you been so?

A. I am, and have been so rising thirty years.

2 Q. Have you examined the respective plans of survey adopted by Jacob Trumpbour and Holmes Hutchinson, in surveying the canals of the State, the map and field book on the Champlain canal presented by Holmes Hutchinson; the specimen of field book, field notes and rough maps, presented by Jacob Trumpbour to the committee, so as to understand their different plans of survey?

A. I have examined, and think I understand their different plans.

3 Q. Will you look at part first, chapter ninth, title ninth, section fourth, of the Revised Statutes, page 218, and state to the committee, which of the said plans of survey you, as a surveyor, consider most conformable to the requirements of that section, and the reasons upon which your opinion is founded?

A. I have examined that section of the act, and am of the opinion that it requires an actual survey by courses and distances, of the



exterior boundaries of all the lands belonging to the State adjacent to the canal or connected therewith; and such a written description, by metes and bounds, as will enable both the agents of the public and the owners of private property adjoining, to determine the boundary line between them, so long as the bounds erected by the surveyor shall remain; and in case any of the bounds or visible objects become obliterated or removed, that such might be renewed by a resurvey according to the field notes or record. If I understand Mr. Hutchinson's plan of surveying, it is this,—he commenced by running a line by courses and distances, which he denominates a base line along the inner edge of the towing path; at each station of the alignment, he bisects the angle with a line which he has measured each way to the exterior limits of the State property, at intermediate points; where a variation in the width of the State property rendered it necessary, he has taken offsets at right angles with his base line, and measured them in the same manner as he did his bisecting lines. In his passage he has noted the distance on his base line from his last station to where he passed locks, bridges, culverts, aqueducts, waste-weirs; and noted in like manner the distance at which he intersected division lines of farms, and crossed streams of water. Ponds, basins, and such parts of the canal as are much broader than its general width, he has surveyed in the usual way, by courses and distances; in no other instance has he given courses, distance or description of bounds of the exterior lines of the State property, but has furnished sufficient data by which those courses and distances can be ascertained by mathematical calculation.

It appears from the map and field book of Mr. Trumbour, that he has surveyed on both sides of the canal the exterior lines of the State property in the usual way by courses and distances, and that he has taken the bearing and distance from definite points in his line to locks, bridges, culverts, aqueducts and waste-wiers, and also to such other permanent objects as were found adjacent to his line; such as dwelling-houses, stores, factories, meeting-houses, &c., and that he noted buildings standing upon his line, with the number of feet and inches which each encroached upon the State property; that he noted monuments at different stations; that in making his survey, he has frequently taken check lines across the canal by course and distance, designating the stations to and from which they were taken; he has noted the distance on his line at which he intersected division lines of farms and crossed streams of water.

In accordance with what I have before stated, I should say the plan of survey adopted by Mr. Trumbour is most conformable to the requirements of the fourth section, referred to in the question; because it points out on the ground, by courses and distances, the exterior boundaries of the State property, and his field book, as far as I have examined it, appears to contain a full description of the survey as taken on the ground. I would give his plan the preference for another reason. Check lines across the canal at reasonable distances from each other, furnish data by which to determine with a great degree of accuracy whether the survey has been correctly made. This plan of survey furnishes another check upon the work. Two surveyors, one on each side of the canal, mov-



ing at an equal pace, can conveniently inquire of each other their course and distance from the last station; and if the course across the canal at that station had been correctly taken and their courses parallel, this would be a perfect check on the measurement, unless each party made the same mistake; the many references which Mr. Trumbour has made to permanent objects by taking their bearing and distance would very much facilitate the renewal of lost boundaries.

Whereas, by Mr. Hutchinson's plan of surveying, no means exist of detecting errors in the work, either in course or distance, should any have been committed. I do not discover either upon his field book or map, as far as I have examined them, any reference by course and distance to any permanent objects, unless the quoin posts of the locks can be considered as such reference. His field notes are concise, and his key or explanatory notes to the field book and map I think rather ambiguous; but if I do understand them, his base line at the locks can be correctly ascertained.

In order to ascertain the exterior lines of the State property by his map and field book, it would be necessary first to ascertain his base line and its angular points, measure the length of the bisecting offsets and lines connecting their extremities, would be the exterior lines of the State property, the courses and distances of these exterior or connecting lines can be determined on the ground by the compass and chain, if there is nothing to obstruct the view; but if so, the course must be calculated and then run.

4 Q. What, in your opinion, is the comparative expense and labor of making and completing the survey upon the different plans pursued by Jacob Trumbour and Holmes Hutchinson, including the returns, field book and map?

A. Without going into a particular calculation, I should say Mr. Hutchinson's expense and labor would be about one-third of that of Mr. Trumbour's.

*Cross-Examined.*

5 Q. Have you, as a surveyor, had any experience in surveying canals, or in surveying land contiguous or adjoining to canals?

A. I have not.

6 Q. How often will those parallel courses probably occur which you say will afford so complete a check upon the measurement at the same time, upon opposite sides of the canal?

A. That would depend upon the shape of the country through which the canal passed, and its direction. If it was a level country, and the canal straight, the lines would be parallel.

7 Q. Are the check lines used in Judge Trumbour's plan of any use to detect mistakes, when the ground is irregular and the canal crooked.

A. They are.

8 Q. Why are they of any use in such places?

A. Those check lines, together with the exterior lines of the canal, would embrace all the lands lying between any two checks; the latitude and departure would prove whether the work was correct.

9 Q. Does it appear from Judge Trumbour's notes of survey that he took the latitude and departure from tables as he progressed, to test the accuracy of his work?

A. I have seen nothing of that in Judge Trumbour's field notes or maps.

10 Q. State how often, according to your inspection of Judge Trumbour's maps and field notes, he measured check lines across the canal?

A. I have not estimated the distance between any two.

11 Q. How near must those check lines be to each other to enable the surveyor to detect a miscount of one chain in the measurement of the exterior lines?

A. He could detect an error of one chain probably in ten miles, if the work was well done. If his latitude and departure showed an error or difference of one chain in ten miles, he ought to run that work over again.

12 Q. What evidence have you that the survey was so corrected by a calculation on the ground?

A. I have none at all.

13 Q. Do the check lines of Mr. Trumbour aid in fixing the location of the exterior lines, with respect to the canal itself?

A. Not unless be noted the margin of the water on both sides of the canal at the time he measured the check line.

14 Q. Upon what objects or measurements is Mr. Trumbour compelled chiefly to rely for determining at any future day the exact location of the different lines and angles of his survey?

A. The objects and measurements noted in his field book.

15 Q. What are those objects, so far as you have observed?

A. Dwelling-houses, factories, locks, bridges, marked trees, I think are mentioned, culverts, waste-wiers, meeting-houses; his references are so numerous I cannot repeat them all without reference to his field notes.

16 Q. Look at a map of Mr. Trumbour's survey, and say, are not the exterior lines of the State property run many feet outside of either end of bridges; and where the lines do not intersect objects, should not the course and distance be taken to particular parts of those objects?

A. From his rough map it appears that the exterior line of the State property is laid down outside of the bridges. Whether the line actually run on the ground is outside of the bridges or not, I cannot certainly say. [To the other part of the interrogatory the witness replies,] If the object is one which is temporary, and likely to be soon removed, I should not note it, if I had designated a permanent one within a short distance; but if it were permanent, and the distance from the last permanent object required it, I should note it, with the distance and bearing to some particular part of it; especially if it stood within the line of the State property; and if outside, I should take the bearing and distance, unless I had done so to some other permanent object.

17 Q. Do you not, in your examination of Mr. Trumbour's field-notes, find that he frequently refers to bridges, by saying to

about the middle of the bridge, or to bridge, without designating any point of it?

A. I think I recollect entries where he mentions the centre of the bridge, and others to the bridge; I cannot say how frequently they occur.

18 Q. In stating, as you have done, that you do not discover in Mr. Hutchinson's field-book or maps any reference to permanent objects by courses and distances, except to the quoin-posts of the locks, are the committee to understand that there are no references to other permanent objects? And further, does not the base line of Mr. Hutchinson's survey pass directly across the waste-weirs, aqueducts and bridges, in such a manner as to render a reference to them by courses and distances unnecessary?

A. To the first part of this interrogatory the witness says: So far as I understand his field-book, I have not discovered any others. And to the residue he says: I cannot say whether the base line passes over those objects or not, unless we are to understand that a line running along the inner edge of the tow-path would, as a matter of course, pass over them.

19 Q. Will you look at Mr. Hutchinson's map and say whether the base line does or does not intersect the line of each bridge, and is not the distance noted?

A. On the map it appears that the base line does cross the bridges, but what part of the bridges does not appear; the distance on the base line to the bridge is stated or given from the last station.

20 Q. Does the specimens of field-book presented by Mr. Trumpbour give the courses and distances of each piece of land taken from any individual, or does it give the courses and distances of two sides only?

A. In answer to this question I can only say, that he has noted division lines between individual owners; if he has noted them all, then he has the courses and distances surrounding every piece of land. If he has neglected to measure the distance across the canal upon those division lines, and has given the course only, he will then be under the necessity of calculating their length by the aid of his check lines.

21 Q. Will you look at Mr. Trumpbour's field-notes, and state whether he has therein noted the distances across the canal on the line of the property of each individual, or the courses of those lines only?

A. As far as I have examined the field-notes, I think his practice has been generally to take the courses only.

22 Q. Will you look at Mr. Trumpbour's field-notes, and state how many check lines across the canal you find noted from Black-Rock lock to Pendleton?

A. I cannot satisfactorily determine from the field notes where those two points are; the field-notes taken on the ground, from their nature, are better understood by the person who made them than by any other. After they are put in form they ought to be understood by every body.

23 Q. How many check lines are noted in Mr. Trumpbour's field notes, from Pendleton to the west bridge in Lockport, a distance of seven miles?

[To this interrogatory the witness gives the same answer as to the last.]

24 Q. In determining hereafter the location of the outlines of Mr. Trumpbour's survey, upon which would you place the principal reliance, the courses of the lines as obtained with the compass, or upon offsets to the canal?

A. I should place it upon the compass rather than upon offsets to the water's edge.

25 Q. Will you look at the plans and field-notes of Mr. Trumpbour's survey, now before the committee, and state whether it appears from them that he was in the habit of designating the bearings of his outlines to fractions of a degree less than one-half?

A. He was. He has noted quarters.

26 Q. How great an error may arise in any one instance, admitting the bearing to be given to the nearest quarter of a degree?

A. If the course taken leads from the one object to the other, there will be no error. If not, the error will be so much as the course noted departs from the true line.

27 Q. If the true course should be a departure of seven minutes from the one noted, how much variation would that produce in a distance of one mile?

A. About seventeen links.

28 Q. So long as the inner edge of the towing-path adopted by Mr. Hutchinson as his base line remains unchanged, or can be restored, can the extent of any encroachment be at any time ascertained from his survey by measurement only without compass?

A. If the inner edge of the tow-path is so permanent that there will be no difficulty of ascertaining its true place at any time hereafter, and that so definitely as to determine the point where the base line lies, then, after measuring the base line between the two offsets, and the length of those offsets, the exterior lines can be ascertained, if there is nothing to obstruct the view from one to the other, in which case the extent of the encroachment might be ascertained; but to do it with accuracy, a compass would be necessary, to find the courses of the offsets, and the angular points of the base line.

29 Q. Look at any maps of Mr. Trumpbour's survey, for instance those of Rochester and Lockport, and say, do or do not the lines on the exterior bounds, give the exact length of the canal?

A. As to the map of Rochester, although it gives the courses and distances of the exterior bounds of the State property, it does not give the exact length of the canal, as would a line run in the middle of the canal waters. As to the map of Lockport, it does not appear to give the length of the canal; it gives the courses and distances on one side only; it does not appear to be finished.

30 Q. What is the present variation of the magnetic needle from the true or astronomical meridian, and is that variation east or west?

A. It is about three years since I took an observation for the purpose of determining its variations. I have not the minutes I made at that time, with me, neither do I recollect distinctly what I found it to be, and cannot say what it is now. The variation now is west of north.

31 Q. Is the variation of the magnetic needle the same in all parts of the State?

A. I have made observations in Columbia county only.

32 Q. Is it uniformly the same in the same place?

A. It is not.

33 Q. Is the increase and decrease in the variation uniform, or is it sometimes variable and at other times retrograde?

A. The annual variation is uniform, either east or west, so far as I have discovered; I have not been in the habit of taking observations for the purpose of ascertaining the variation, oftener than once in four or five years.

34 Q. You say there is no check in the plan of survey adopted by Mr. Hutchinson; do you intend to say that the inner edge of the towing-path may not be used to correct the errors of the magnetic needle?

A. If the inner edge of the towing-path were permanent, it would control courses and distances both, as they must always yield to permanent object; but in running one line, if any errors are committed, I know of no means of correcting it but by a resurvey; this is what I mean in my direct examination.

35 Q. Can or cannot the distance upon the base line along the inner edge of the towing-path, be measured with more precision, and the location of that line be fixed with greater facility and exactness, by reference to permanent objects, than either of the exterior lines of State property.

A. With respect to the first branch of the inquiry, it would depend upon the care and labor bestowed in running the lines. The location of the base line, can be found with greater facility than either of the exterior lines, if there are an equal number of near and convenient permanent objects; but as to the exactness with which the work may be executed, I do not think there is any difference.

36 Q. Can you, upon Mr. Trumpbour's map and field notes, ascertain, without measurement or calculation, either the distance on the out bounds, or the quantity of land taken from any individual; if so, state the place?

A. Not without calculation.

*Direct examination on the part of Mr. Trumpbour.*

37 Q. Is it usual for surveyors to insert traverse calculations in their field notes or on their maps?

A. I have never known an instance of it that I remember.

38 Q. Will the measurements of the base line upon Mr. Hutchinson's plan, give the exact length of the canal?

A. Not as exact as if measured in the middle of the canal.

39 Q. Which of the two plans of survey, that of Mr. Trumpbour or Mr. Hutchinson, furnishes the best means of correcting the vari-

ation of the magnetic needle, when the permanent objects noted by each, are taken into consideration?

A. Mr. Trumpbour's.

40 Q. By Mr. Hutchinson's mode of survey, as it appears from his map and field book, what permanent objects would there be to regulate his survey upon that part of the Erie canal where there are no locks, as between Canastota and the first lock east of Utica, there being no locks for the distance of about forty miles?

A. Upon his plan, as he has performed it upon the Champlain canal, I see no reference to permanent objects by which his line could be definitely determined or ascertained, but at the locks.

*Cross-examined by Mr. Hutchinson.*

41 Q. What objects are referred to in Mr. Trumpbour's survey, by which the variations of the magnetic needle may be more accurately determined than in Mr. Hutchinson's?

A. Dwelling houses, meeting houses, saw mills, carding machines, stores, bridges, culverts, aqueducts; Mr. Hutchinson not having noted those objects, that I recollect, at the point of his line, so as to be able to locate the place definitely, where his line passed them.

AUGUSTUS TREMAIN.

Taken and sworn in the committee }  
the 16th May, 1832. }  
J. HAMMOND, *Chairman.*

(No. 27.)

*Holmes Hutchinson's Deposition.*

IN COMMITTEE—17th May, 1832,

*Present*—Mr. McDONALD,  
Mr. HOGEBROOM,  
Mr. HAMMOND, *Chairman.*

Mr. Livingston and Mr. Cheever, of counsel for Mr. Hutchinson, moved to examine Holmes Hutchinson as a witness.

Objected to by Mr. Viele, of counsel for Jacob Trumpbour, on the ground that having appeared as a memorialist before the Legislature, in opposition to Mr. Trumpbour, and appeared in the same manner before the committee, in person and by counsel, and it being manifest from the whole course of the testimony that he has a direct personal interest in the matters investigated, he ought not to be admitted or examined as a witness.

Mr. Livingston answers, insisting on the propriety of his examination.

*Holmes Hutchinson*, one of the memorialists, sworn and examined, deposes and says:

1 Q. Will you state what has taken place between yourself and Mr. Trumpbour, relative to his being permitted to take a contract



upon certain conditions for making one half of the surveys of the canals, which you were entitled to make under your proposition for the said surveys, as accepted by the Canal Commissioners?

[This question is objected to on the ground that the contract between Mr. Trumpbour and Mr Hutchinson was in writing, and has already been proved before the committee, together with the written assent of the Canal Commissioners, and it is not therefore competent to give parol evidence of that contract, its terms or conditions. Mr. Livingston replies, that the testimony expected to be drawn out by this interrogatory is not to shew what the contract was, but other circumstances connected with it.

Mr. Trumpbour by his memorial, represents that his contract is with the Canal Commissioners, that the matter between him and Mr. Hutchinson was in effect the place of division, if that be so, I see no objection to the question.]

A. When I delivered the letter of Mr. Seymour the paper was executed which is signed Jacob Trumpbour and Holmes Hutchinson. Mr. Trumpbour agreed to conform to my plan of survey, and to pursue the same uniform system throughout. I stated to Mr. Trumpbour that I had made surveys to designate the quantity of land taken for the use of the canals, and to designate the boundaries, and this had been done by running one line with the chain and compass by measuring offsets to the exterior lines. But that I wished the approbation of the Canal Commissioners before a final determination of the details of the plan; for the purpose of ensuring that uniformity, Mr. Trumpbour further agreed that the maps of his portion of the surveys should be made at Utica, by the same persons that executed mine; these conditions were to have been the basis of his contract with the Canal Commissioners for the execution of one half of the canal survey, and it was well understood at that time by him and myself, that the Canal Commissioners must be fully assured that these conditions would be performed before they would execute any contract with Mr. Trumpbour. I had an interview with Mr. Trumpbour at Port-Byron, the latter part of August or the first of September, 1829, when he had surveyed about eight miles of the Erie canal, and again saw him at Utica about the fourteenth of October, when I was told he had surveyed about twenty miles, apart however I believe on one side only. At this last interview my plan of surveying the canals, that had been approved by the Canal Commissioners, was clearly explained to Mr. Trumpbour, and he was requested to conform to it, and to procure books similar to those shewn him for his field-notes; his reply was that he had been accustomed to keep his field-notes differently, but that he would take his minutes of survey as he had done (and as he promised on the thirteenth day of April, and subsequently,) in so full a manner as to conform to mine, in the copies for the returns. When Mr. Trumpbour returned to Utica in December following, he then, for the first, time objected to the method that had been prescribed for making the survey. Contracts were to have been made by previous understanding at this time by each party with the Canal Commissioners for the execution of the survey, but this refusal on the part of Mr. Trumpbour to conform to

the original understanding prevented the execution of those contracts.

**IN COMMITTEE—18 May, 1832, Friday.**

**Present—Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND, Ch'n.  
The memorialists and their counsel.**

*Mr. Hutchinson further examined.*

**2 Q.** Did you object to Mr. Trumpbour's having part of the survey to do when that proposition was first made to you?

[This question is objected to for irrelevancy.]

**A.** I did apprise Mr. Seymour, when he applied to me on the part of Judge Trumpbour, I objected to a division, or to allow him to execute a part of the survey, on the ground that he might not be willing to pursue a uniform system, or make his survey conform to mine. Mr. Seymour stated that Judge Trumpbour was very desirous to do part of the work, and he had no doubt of his willingness to conform to a uniform system in doing the work, and requested me to see Judge Trumpbour in relation to that subject.

**3 Q.** Did you apprise Mr. Trumpbour of the matter stated in your last answer before the paper writing of the thirteenth April, 1829, was signed by yourself and Mr. Trumpbour?

**A.** I did, or the substance of it.

**4 Q.** (By the committee.) Did you, at that time, disclose any plan of survey to Mr. Trumpbour?

**A.** I informed Mr. Trumpbour that I had made several surveys, to designate the boundaries of the lands taken for the canal, and the quantity; that these surveys had been done by running one line with the chain and compass, and taking offsets to the exterior bounds; that this survey was of great importance, and I wished the approbation of the Canal Commissioner to the details of the plan, so that the work might be approved when done.

*Cross examined on the part of Mr. Trumpbour.*

**5 Q.** Is the letter shewn to you, marked by the committee, Exhibit C, 10 April, 1832, in the proper hand writing of Henry Seymour, late acting Canal Commissioner?

**A.** I believe it is.

The following is a copy of said letter:

*" Utica, April 7th, 1829.*

*" JACOB TRUMBOUR, Esq.*

*" DEAR SIR,*

*" The bearer is Mr. Hutchinson, who made proposals for surveying the canals; he will confer with you on the subject of dividing the job with you: and any agreement which you may make with him, not*



more disadvantageous to the State than Mr. Hutchinson's proposition, will be acceptable to the Canal Commissioners.

"With much respect,

"Your obedient servant,

HENRY SEYMOUR."

6 Q. Were you the bearer of that letter to Judge Trumpbour, and did you know its contents before its delivery?

A. I was the bearer, and think I knew the contents.

7 Q. Was the agreement, marked by the committee Exhibit E, 24 April, 1832, signed by you and Jacob Trumpbour; and was it entered into at the time, and in consequence of the delivery of that letter?

A. It was so signed, on the day it is dated I presume; and in consequence of the delivery of that letter, and of the request of the Canal Commissioners, and of the agreement of Judge Trumpbour at the time; I mean to say I signed it, for the reasons set out in my direct examination. It was signed at the time of the delivery of that letter to Mr. Trumpbour.

The following is a copy of said agreement:

*"To the Canal Commissioners.*

"We agree to divide the survey of the canals at *Canastota*. Mr. Hutchinson to take the eastern part of the Erie canal and the Champlain canal, and Jacob Trumpbour to take the western part of the Erie canal and the Cayuga and Seneca and Oswego canals; each to be entitled to one half of the \$5,000, or the one half of the proposition as made by Mr. Hutchinson.

"JACOB TRUMBOUR,  
"HOLMES HUTCHINSON.

"13 April, 1829."

8 Q. Had you ever seen Jacob Trumpbour before that time?

A. I never had to my knowledge.

9 Q. What reason had you for apprehending that there would be any difference in the plan of survey; or that he would be unwilling to conform to a uniform method before you had any interview with him?

A. Surveyors are matter of fact men. This survey was of great importance, and it was necessary that the plan should be fully understood. As I was unacquainted with Judge Trumpbour, differences in the details were to be apprehended, and I could not judge of his willingness to conform to my plan of survey.

10 Q. At whose house did the interview between you and Jacob Trumpbour, on the 13th of April, 1829, take place? Were David H. Burr, Jacob K. Trumpbour and Mr. Cockburn, or either of them, present during that interview, or any part of it?

A. The interview was at Mr. Trumpbour's house, and in his office. I saw Jacob Trumpbour the evening previous at a tavern. There were several persons present at his house, and a part of the time there was a person or persons present at the office. I think I

saw David H. Burr there, and several other persons ; the other persons I was not acquainted with at that time.

11 Q. What plan of survey of yours was it that Judge Trumbour agreed he would conform to ?

A. It was a plan that I intended to mature, which should obtain the sanction of the Canal Commissioners.

12 Q. If he agreed to adopt a plan to be devised, why was it not inserted in the written agreement made between you ?

A. At the time that paper was signed, which was drawn up by Mr. Trumbour, I also wrote a memorandum, which went more fully into the details of the plan and maps ; this he declined signing, on the ground, as he alleged, there could be no misunderstanding, and that the arrangement was well understood, and it was therefore inexpedient to go more fully into the details until the views of the Commissioners were more fully known.

13 Q. What has become of that memorandum ?

A. It is lost or mislaid.

14 Q. When did you last see it ?

A. I have not seen it since a short time after it was written.

15 Q. The want of conformity to your plan of survey, having previously been strongly apprehended by you, and Judge Trumbour having refused to sign a memorandum to that effect when your agreement was written, did you not consider the condition of conforming to your survey as abandoned ?

A. I did not so consider it.

16 Q. Why did you not then preserve the memorandum ?

A. I don't know how that memorandum got lost.

17 Q. In communicating what had passed between you and Mr. Seymour to Judge Trumbour, as stated in your direct examination, what language did you use, or what did you say ? give the words or their substance.

A. I had a long conversation with Mr. Trumbour, and stated to him that I had had a conversation with Mr. Seymour, in which Mr. Seymour wished me to make an arrangement with Mr. Trumbour for dividing the survey of the canals. That Col. Bouck and himself would be gratified with arrangements of that kind, and that Mr. Seymour said there must be a uniform plan of survey.

18 Q. In stating to Mr. Trumbour that you had surveyed lands taken for the use of the canal, upon the plan of a single line with offsets, had you reference to the survey of the Erie canal from Rome to Schenectady, and what others, if any ?

A. I had reference to the survey of part of the Erie canal, the Blackstone canal in Massachusetts and Rhode-Island, and surveys on the Cumberland and Oxford canals in Maine, made by me or under my direction. I had reference to the survey of that part of the Erie canal from Rome to a few miles below Schenectady.

19 Q. Did the survey of the Erie canal which you refer to, designate the boundaries of the State land belonging to the canal ?

A. There were no boundaries placed in that survey ; but it was measured by offsets to the outside of the embankments, and included all the lands necessarily taken for the canals.

20 Q. Did it give any thing more than the average width of the several parcels of land taken from different farms for the canal?

A. It gave a survey on the line of the towing path and the width at different places measured by offsets; and from these measurements, the average width and quantity were ascertained.

21 Q. Were the surveys of the canals in Massachusetts, Rhode-Island and Maine, to which you have referred, made before or after the canals were completed, and for what purpose?

A. The first survey on the Blackstone canal was made before its completion, for the purpose of ascertaining the quantity of land requisite for the use of the canal, and the maps made from the survey were filed, for the purpose of the appraisement. A subsequent survey was made after the canal was completed; partly under my supervision, by my assistant engineer, for the purpose of designating the boundaries. That in Maine was made partly before the construction of the canal, for the purpose of the appraisal of damages.

22 Q. Did Judge Trumbour communicate to you his plan of survey at the time of your first interview in April 1829?

A. He did not. But we had a good deal of conversation upon the subject of the surveys.

23 Q. Did he state to you that he had communicated his plan to any, and which of the Canal Commissioners?

A. He did not.

24 Q. When was Mr. Johnson's plan of survey first communicated to Mr. Trumbour, to your knowledge?

A. The plan of survey that Mr. Johnson pursued under my direction, was communicated to Mr. Trumbour about the 14th October, 1829, at the time of a meeting of the Canal Commissioners at Utica. Besides, in addition to a particular conversation upon the subject, I shewed him my blank field books, one of which is now before the committee I believe, in the book-store of Mr. Hastings and Tracy, in Utica.

Adjourned, 4 P. M.

The committee met—May 18th, 4 P. M.

25 Q. When was the plan of survey pursued in surveying the Champlain canal adopted, and what plans of survey had been discussed between you and Mr. Johnson at that time, or shortly previous thereto?

A. I think it was adopted in September, 1829, and sanctioned by the Canal Commissioners. We had discussed the general plans; one to run a base line with offsets; the other, to run a line on each side of the canal.

26 Q. By which of the Canal Commissioners was your plan sanctioned, previous to Mr. Johnson's commencing the survey?

A. By Mr. Seymour, who had charge of that business.

27 Q. Did Mr. Seymour, in December 1829, advise a reference of the two plans adopted by you and Mr. Trumbour, to the Canal Board?

A. Yes; he mentioned that as the Canal Board were finally to approve of the surveys, it would be well to take their opinion upon them.

28 Q. Did you and Trumpbour, in consequence of that advice, appear before the members of the Canal Board, with your respective plans; and if so, when?

A. We appeared before some of the members of the Canal Board, at an informal meeting, some time in the winter of 1830, probably in the month of January or February.

29 Q. Where were the maps of the Champlain canal made, and by whom?

A. Made at Middletown, in Connecticut, by Mr. Johnson, Mr. Dexter and Mr. Bernard.

30 Q. Was it one of the bases of the contract between you and Judge Trumpbour, that the maps of his, as well as your survey should be made at Utica?

A. It was; and I made arrangements accordingly, at a subsequent period.

31 Q. Had Mr. Johnson commenced his survey upon the plan adopted at the time of the interview at Utica, on the 14th October, 1829?

A. I cannot say whether he had or not. He commenced in October; I do not remember the date.

32 Q. Have you any personal knowledge that Mr. Seymour was authorised or requested by Mr. Trumpbour to apply to you for a division or participation in the contract for surveying the canals?

A. I had. I received my information from Mr. Seymour and from Mr. Trumpbour. Mr. Trumpbour informed me at Kingston, that, although Mr. Seymour had engaged to apply to me for a division of the survey, he did not expect to hear any thing more upon the subject. He appeared to be gratified that he should be able to get a part of the job.

33 Q. Did Mr. Trumpbour say any thing more to you upon that subject, than you have stated in your last answer; and if so, what?

A. We had a long conversation at Kingston. I do not now recollect that there was any thing more said about Mr. Seymour's making an application to me for a division of the job.

34 Q. Did Mr. Trumpbour ever tell you that he had authorised or requested Mr. Seymour to apply to you for a division of the job for surveying the canals?

A. Mr. Trumpbour told me that Mr. Seymour had engaged to do so, or words to that effect; and I supposed at Mr. Trumpbour's request, from the manner of the conversation.

35 Q. Did Mr. Trumpbour ever tell you, or by any direct statement give you to understand, that Mr. Seymour's application to you was at his, (Mr. Trumpbour's,) solicitation?

A. I do not recollect other than as I have previously stated.

36 Q. Was the letter now shewn to you, and marked by the committee, Exhibit O, 18th May, 1832, written by you, and sent to Judge Trumpbour?

A. It was.

The following is a copy of said letter :

*" Geneva, July 24, 1829.*

**" JACOB TRUMBOUR,**

**" Dear Sir:—**It was my intention to have called to see you, on my journey to this place, but I was unable to take the boat in season, and as the gentlemen intrusted in the survey of the Chemung and Crooked Lake canals were very urgent, I concluded to omit it, and shall be happy to see you at this place a week or fortnight from Saturday, as you may wish ; but should it not be convenient, I will certainly see you before my return east.

**" I have ascertained the lowest price at which paper can be procured for the maps, and have engaged the services of Mr. Johnson, from Capt. Partridge's military academy, a very superior topographer, to assist me in the survey and maps.**

**" Sincerely your's,**

**" HOLMES HUTCHINSON."**

**37 Q.** Was the letter now shewn to you, and marked by the committee, Exhibit P, 18th May, 1832, written by you, and sent to Judge Trumbour on the day it bears date ?

**A.** I think it was.

The following is a copy of said letter :

*" Albany, Jan. 21, 1830.*

**" DEAR SIR:**

**" I am now in the city, and shall remain here a few days, and was in hopes to have the pleasure to have seen you on the subject of the survey. I was told that you was expected on the 15th inst.**

**" And I am yet in hopes to see you in the course of the present week, so as to arrange for future returns of the survey, or if not conveniently, please drop me a line ; in haste,**

**" Sincerely your's,**

**" HOLMES HUTCHINSON.**

**" JACOB TRUMBOUR."**

*Direct examination resumed.*

**38 Q.** At a meeting with Judge Trumbour in Utica in 1829, did he point out that you had deviated from the plan of survey which had been previously well understood and consented to between you and himself, as he stated in page 18 of the printed documents, referred to this committee ?

**A.** He did not point out to me that I had deviated from the plan of survey which had been previously well understood and consented to.

**39 Q.** Did you ever agree to adopt, or intimate an opinion that Judge Trumbour's plan of survey would be consented to or approved of by you ?

**A.** I never did.

40 Q. In your letter of January 21, 1830, to Judge Trumbour, you speak of arranging with him for future returns of the survey. To what arrangement did you allude?

A. I alluded to the arrangement mentioned in page 9 of the printed documents in the letter of the Canal Commissioners, and in page 12 in my memorial.

41 Q. Read the parts of the printed documents referred to by you in your last answer?

A. From page 9. "The Commissioners have been anxious for a long time to adjust this controversy, and have made every effort for that purpose which they thought consistent with the interest of the State and the rights of the other parties. Mr. Hutchinson, in the winter above mentioned, generously offered to be at one-half of the expense of a re-survey of the work done by Mr. Trumbour, in order to produce uniformity. This has been all to no purpose," &c.

*Cross-examined on the part of Jacob Trumbour.*

42 Q. Was the particular charge of the survey of the canals committed to Mr. Seymour at the meeting of the Canal Commissioners at Utica on the 14th October, 1829?

A. I cannot say.

43 Q. Were you not present at the meeting of the Board when the motion for that purpose was made and adopted?

A. So far as I now recollect I was not; but I was present at a conversation between the Canal Commissioners at the meeting in which a direction was given to Mr. Seymour to execute the contracts for the canal survey.

44 Q. Had Mr. Seymour, previous to that time, to your knowledge, any more particular charge of the canal survey than any other Canal Commissioner.

A. He told me that he would execute contracts. I never was present when he was constituted the agent of the Canal Commissioners other than as I have stated. I have no knowledge of his having any particular charge except as derived from himself.

45 Q. What did you mean in the former part of your examination, where you stated that Mr. Seymour had charge of the business of the surveys?

A. Well I supposed he had.

Adjourned to the 19th May, 9 o'clock A. M.

IN COMMITTEE—19th May, 1832, 9 A. M.

Present—Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND, *Chairman*.

The parties, Memorialists, and their Counsel.

Mr. Hutchinson further states, in answer to the last interrogatory, as follows:

When I saw Mr. Seymour at Utica, he told me the Canal Commissioners had accepted my proposition, and asked me whether I would be willing to divide the survey and allow Mr. Trumbour to

have a part of it; and gave me the letter of Mr. Trumbour, and said there must be a perfect uniformity in the plan, and said he would execute the contracts; and from this, and other conversations, I presumed he had the charge of the surveys. There are but two acting Canal Commissioners.

46 Q. What were your reasons for supposing that Mr. Seymour had full charge of the survey previous to the 14th October, 1829; when you say the Canal Commissioners at that time gave him directions to enter into contracts, and that the directions were, as you understood, limited to that particular object?

[This question is objected to, on the alleged ground that the question contains a supposition which the witness has not testified to. 2dly. That the question is an attempt to reason with the witness upon his previous testimony.]

A. My reasons, I think, I have fully given in my previous answers, and particularly in my answer to the last preceding interrogatory.

47 Q. Did you exhibit to Judge Trumbour any field book kept in the manner of that relative to the Champlain canal, previous to December, 1829; and if so, when, for the first time?

A. I believe that I exhibited to him the field book with the notes in it in December, 1829, for the first time; and that I exhibited to him the field book prepared in a suitable manner for the sketches, diagrams and field notes, about the 14th of October, in the same year.

48 Q. How was the book exhibited on the 14th October, 1829, prepared beyond the condition of an ordinary blank book; and was there then shewn him more than one such book?

A. There was more than one so shewn; they were of different sizes. The one before the committee is of the larger size. They were ruled in a different manner from ordinary books. They were ruled with two red lines transversely to the faint lines across each page, for the purpose of taking the sketches of the survey. Remarks by the committee: These two red lines run across both pages from left to right, about the middle of the pages, and are about three-fourths of an inch part.

49 Q. Were the smaller books to which you refer, ruled with transverse lines?

A. They were ruled in the same manner as the larger books, and were intended at that time to be used in the field and copied into the larger books.

50 Q. Did you ever see a field-book prepared and kept in the manner of that relative to the Champlain canal, previous to Mr. Johnson's commencing his survey; and if so, when for the first?

A. The books prepared for the Erie and Champlain canal were the first I had seen prepared precisely in this manner, and that was in September 1829. I think these books were first prepared in September, and used in October of that year.

51 Q. Was there ever any written contract between you and the Canal Commissioners, or either of them, relative to the survey, with the exception of your proposition and its acceptance?

[Objected to on the ground of irrelevancy.]

A. There was not.



52 Q. Was any security, and if any, what, required of you for its performance?

[Objected to, and overruled.]

A. I had information that security would be required at the time of executing the written contract, but no security had been given.

53 Q. Has any been required of you?

A. None other, except as I have stated.

54 Q. Had you seen Judge Trumbour in the winter of 1830, before you wrote the letter of the 21st January in that year?

A. I do not recollect, but I think not in January, previous to the 21st of that month.

55 Q. Had your plans of survey been submitted to the Canal Board at the informal meeting referred to, at the time that letter was written?

A. I think not, but do not remember the date of that meeting.

56 Q. Had the offer alluded to in pages 9 and 12 of the printed documents, and to which you have referred, been made or suggested to Judge Trumbour, before your plans had been submitted at that informal meeting?

A. The offer I think was afterwards; but we had frequent interviews, to reconcile the surveys, previous to the offer.

57 Q. Were any of the interviews to which you refer in your last answer, after the interview at Utica in December 1829, had previous to the 21st January 1830?

A. I do not recollect that I saw him between these times mentioned in the question. I think I did not.

58 Q. (By the committee.) Were you influenced by any other consideration than the request of Mr. Seymour, to call on Mr. Trumbour at his residence in Ulster county?

A. I was influenced by no other consideration, except the request of Mr. Seymour and Col. Bouck, as communicated to me by Mr. Seymour.

59 Q. In your interview at Port Byron, in August 1829, did you express or intimate to him your disapproval of the plan, or any part of the plan of survey adopted by him?

A. I did not suppose that Judge Trumbour had fully adopted any plan; but I supposed he was taking his minutes in so full a manner, as to be able to conform to mine in the copies for the returns, upon the plan I intended to submit to the Canal Commissioners for their approval.

60 Q. What was the substance of those other conversations which you have said passed between you and Mr. Seymour, and from which you presumed he had charge of the survey?

A. The conversations there alluded to, were the particular conversations I had with him previous to that time in relation to the canals, relative to the details of the plan, and other matters connected with the transaction.

61 Q. Did you see the notes kept by Judge Trumbour, at Port Byron?

A. I think I did not.

62 Q. Did you become acquainted with his plan of survey, whether he was running two lines or one?



A. We had a good deal of conversation on the subject. I did not suppose he then had a fixed plan, but he was surveying on both sides.

63 Q. Would notes taken on Judge Trumpbour's plan, enable him to make returns in conformity to yours?

A. There would be no very great difference, if offsets were taken to the same point.

64 Q. What was the object of your visit to Judge Trumpbour to Port Byron?

A. I was returning from the west, and called to see Judge Trumpbour, to see what he was doing. I found him unwell. He was not progressing with the survey at that time.

65 Q. Was it a visit of mere civility, or did you call on business relative to the survey?

A. I wished to see him relative to the survey, and see what he was doing.

IN COMMITTEE—21st May, 1832.

Present, Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND, *Chairman.*

The Parties.

*Holmes Hutchinson* further examined on the part of Jacob Trumpbour.

66 Q. Was the letter marked Exhibit Q, 21st May 1832, now shewn to you, written and sent by you to Jacob Trumpbour about the time it bears date?

A. It was.

The following is a copy of said letter:

*"Horse Heads, Tioga Co. Dec. 4, 1831.*

*"JACOB TRUMBOUR, Esq.*

*"DEAR SIR,*

*"In September last, I was directed by the Canal Commissioners to proceed and finish the survey of the canals agreeable to my engagement with the State.*

*"In consequence, however, of the lateness of the season, and being occupied with other business, I have been unable to go on with the work as intended. My object in writing this letter, is to ascertain from you whether you intend or have a wish to fulfil your engagement with me, by making the survey and maps of the western part of the Erie and Oswego and Cayuga and Seneca canals. You must be aware that this business has been delayed by you unnecessarily, and that I hold your obligations for cash lent. Should you wish to go on and finish the survey and maps, you must first execute a contract, with security that will be acceptable to the Canal Commissioners, to complete the survey and maps in accordance with our previous understanding, to conform to my survey, and the map to be made at Utica on the same scale and style of finish. I shall be happy to hear from you on this subject, addressed to me at Utica. And*

[A. No. 335.]

should you wish to see me, I intend being in Albany in January, and will meet you there at any time you may designate.

"I hope you will favor me with an early answer to this letter; for should your previous survey not be made to conform to mine, and to meet the views of the Canal Board, and should you yet decline to fulfil your engagement, I shall make arrangements to perform my contract with the State as early as the weather will permit in the spring.

"Sincerely yours,

"HOLMES HUTCHINSON."

(Signed,) HOLMES HUTCHINSON.

Taken and sworn in committee, }

22d May, 1832. }

J. HAMMOND, *Chairman.*

(No. 28.)

*In Committee, May 19, 1832.*

Present, Mr. McDONALD,

Mr. HOGEBOM,

Mr. HAMMOND, *Chairman.*

*Joseph Henry's Deposition.*

*Joseph Henry*, a witness produced, sworn and examined on the part and in behalf of Holmes Hutchinson :

1 Q. Are you professor of mathematics in the Albany academy, and how long have you been so?

A. I am, and have been so nearly six years.

2 Q. Have you paid particular attention to the science of magnetism?

A. I have.

3 Q. Are not the relative positions or directions of lines obtained by the circumferenter by means of the magnetic meridian, as pointed out by the magnetic needle?

A. They are determined by means of the magnetic meridian.

4 Q. Does the magnetic meridian coincide with the true or astronomical meridian, and how great may be the variation within the limits of the State of New-York, and in which direction, to the east or west?

A. The two meridians do not coincide in all parts of the earth's surface; the variation is different in different places; the variation at Albany is now about  $6\frac{1}{2}$  degrees west of the true meridian. Near the western extremity of this State, the needle points nearly true north; the difference is  $6\frac{1}{2}$  degrees nearly.

5 Q. Is the variation in the same direction at different places upon the earth's surface?

A. It is not. In the States west of New-York, the variation is to the east, while at Albany it is west.

6 Q. Does the variation continue uniformly the same in the same place?

A. It does not, according to the observation I have made in connection with the Surveyor-General; within seven years, the variation has increased in Albany about three-fourths of a degree to the west.

*Adjourned 4 P. M.*

Present, the committee.

7 Q. Is the increase or decrease in the variation uniform, or is it variable, and is it not sometimes retrograde?

A. According to all recorded observations, and my own, it is variable. From the earliest observations in this State, the variation was westward constantly, and decreasing until 1805, when it commenced increasing, and has since continued to increase. In England, for many years, the needle continually increased in its variation to the west, until about 1824, when its movement became retrograde, and is now decreasing.

8 Q. Does the variation at the same place continue the same at different hours of the day, and if not, how great is the difference?

A. I am not aware that any observations in reference to that point have been made in this country; according to observations made in other countries, there is what is called a daily variation, which, according to some observations made in England, about the year 1820, amounted to a mean daily variation of about five or six minutes of a degree.

9 Q. How many feet would an angle of five minutes of a degree subtend at the distance of one mile?

A. About seven feet and a half.

10 Q. Is the magnetic needle subject to be drawn from its true position in the magnetic meridian by local attraction, and of what nature is this attraction?

A. It is. The principal of the disturbing causes is iron ore, under or at the surface of the earth.

11 Q. Is it subject likewise, to similar deviations from causes of an electrical character, existing within the body of the instrument?

A. It sometimes happens that by rubbing against the clothes of the surveyor, the glass of the instrument becomes electrified and attracts the point of the needle to the glass, and keeps it stationary.—An experienced surveyor will however take care to guard against this occurrence.

12 Q. What are the common defects in the construction of the circumferenter; do they not consist principally in the friction at the point of support of the needle, the shape and adjustment of the needle, and the accuracy of the centerings, and divisions?

A. They do. There is however a case in which an error may arise from the magnetic axis not coinciding with the axis of the needle.

13 Q. Supposing that in a circumferenter of ordinary construction, the needle were to settle precisely in the direction of the meridian, with what degree of certainty could the quantity of the angle measured be determined; or otherwise, how small a fraction of a de-

gree can be measured with certainty, by means of a circumferenter of ordinary construction, under the most favorable circumstances?

A. Certainly within the twelfth part of a degree, and perhaps within a fifteenth; this is from my own observation.

14 Q. How great is the variation which may exist between the bearings of the same line at different times, and with different circumferencers, in the hands of different surveyors?

A. I cannot tell. But if the line had been run seven years ago, at Albany, it could not differ less than three quarters of a degree, so far as the variation is concerned.

*Cross-examined on the part of Judge Trumbour.*

15 Q. What has been for seven years past the mean annual variation?

A. Between six and seven minutes of a degree.

16 Q. You say in your direct examination that the two meridians do not coincide in all parts of the earth's surface, but the variation is different in different places, and that the variation does not continue uniformly the same in the same place; if so, would not the magnetic meridian, ascertained in one particular place, be very uncertain to calculate from, to ascertain the variation of the magnetic needle, upon any given course in a different place?

A. It would be uncertain. Direct observation in the present state of magnetic science can alone determine the magnetic variation at any particular place.

17 Q. Would it not be more safe in the location of property in different places of the earth, where permanent objects are given, to ascertain the variation of the magnetic needle by those permanent objects, than to be dependent upon the true meridian in all re-surveys to be made in the neighborhood of such permanent objects.

A. It is best to depend as little as possible upon the magnetic needle, and to be governed by permanent objects noted in the preceding survey.

18 Q. (By the committee.) Could the true astronomical meridian be determined without the aid of celestial observations of some body having a determinate place in the heavens?

A. No.

19 Q. Suppose you were to run a new line, how would you do it, by the magnetic needle or the true meridian?

A. If I were to run a line with a common circumferenter, I would run it from point to point, as the needle directed, and mark such permanent objects as might be found in its course; if none existed on the line, I would take an angle and distance from each extremity to such permanent objects as were near, as surveyors generally do, so that it might be retraced without regard to the magnetic variation at any future time. By this means, the line would be rendered independent of the variations of the needle.

JOSEPH HENRY.

Taken and sworn in committee, }

May 23, 1832. }

J. HAMMOND, *Chairman.*

(No. 29.)

*Jacob Trumbour's Deposition.**May 21st, 1832.*

IN COMMITTEE—Present, Mr. HAMMOND, *Chairman*,  
Mr. M'DONALD,  
Mr. HOGEBROOM.

Mr. Viele, of counsel for Jacob Trumbour, moved to examine him under oath, as Mr. Hutchinson had been examined. This is objected to on the part of Mr. Hutchinson, and his counsel, Mr. Livingston and Mr. Cheever, who contend that he is not entitled to present his statement under oath, and protested against this motion.

*Jacob Trumbour*, one of the memorialists, being duly sworn, deposeseth and saith as follows:

1 Q. Before you presented your first proposition for surveying the canals, did any, and which, of the Canal Commissioners, state to you the manner in which the proposition ought to be made; and if so, how?

A. Before my first proposition was submitted, I had an interview with the acting Canal Commissioners. Col. Bouck stated that the proposition must be made for a specific amount. This interview was sometime in the winter of 1828.

2 Q. Was this statement made in the presence of Mr. Seymour?

A. I do not recollect. I think he was not present.

3 Q. Did you at any time authorise or request Col. Bouck or Mr. Seymour to apply to Holmes Hutchinson for a division or participation in the contract for surveying the canals?

A. I have no recollection that I ever did, but to the contrary I know that it was suggested by one or the other, or both of them, I cannot say which, that a division might be made.

4 Q. In the interview between you and Holmes Hutchinson at Kingston, in April, 1829, was any plan for the surveying of the canals stated or submitted to you by him?

A. There was not.

5 Q. Did you in that interview suggest and explain to him the plan afterwards pursued by you?

A. I did fully.

6 Q. Were any, and what objections, suggested by him at that time?

A. None that I recollect.

7 Q. Was any memorandum written by Holmes Hutchinson, purporting to require a conformity on your part to his plan of survey, offered or submitted to you during that interview?

[This question is objected to by the other side.]

A. There was not.

8 Q. Was there during that interview any memorandum or writing relating to the agreement between you, about the survey of the canals or any of its terms, drawn by Holmes Hutchinson and submitted to you?

A. There was not.

9 Q. Did Mr. Hutchinson in that interview in any way communicate to you that Mr. Seymour had applied to him for a division of the contract on your behalf, or at your request?

A. Upon that subject all I can recollect is, that he expressed Mr. Seymour's desire to have the survey divided.

10 Q. Did you or not understand from him that he came at the particular request of Mr. Seymour?

A. I did so understand it.

11 Q. Did you have an interview with Mr. Seymour, acting Canal Commissioner, after the 13th of April, 1829, and before you commenced your survey; and if so, when and where; and what passed at that interview relative to the survey?

A. I think it was in June, 1829. I met him at Rochester and travelled with him to Port Byron on board the packet boat. The first thing I did was to shew him the agreement between Mr. Hutchinson and myself, of the 13th April, 1829. I then communicated to him that on my way there I had called at the canal-room, and could ascertain but a very few releases from individuals to the State. I then asked for his particular instructions as to the property to be set apart for the State on both sides of the canal, then received from him the instructions set forth in my memorial, presented to the Legislature on this subject. At the same time I communicated to him my plan of survey, as it has been pursued by me, and also stated to him that I had called upon the Surveyor-General, and received his approbation of that plan. I further state that he gave me a discretionary power to vary from his general instructions where the interest of the State required it. At the same time I suggested to him the propriety of entering into a written contract, to which he replied that it was not necessary, as the matter was perfectly understood.

12 Q. Did Mr. Seymour in that interview express any and what opinion relative to your plan of survey?

A. From all the conversation, I took it for granted that it met his approbation, but I cannot give the particular words.

13 Q. Did Mr. Seymour call on you after the survey had been commenced at or near Montezuma?

A. He did. I think he so called on the 26th of June 1829, at the junction of the Cayuga and Seneca with the Erie canal at Montezuma. I had commenced on the 24th of that month at Port Byron.

14 Q. Was he then shewn and did he observe your method of surveying, and did he express any objection or signify any assent?

A. I was then in the act of surveying on the ground, taking a check line from the berm side across to the towing-path side. I then explained to him what I had done; also stated to him a particular building I had partly or in whole included on the towing-path side, and that there were some buildings on the berm side, particularly Mr. Clark's store, part of which would fall within the bounds of the public property. I desired his particular instructions concerning said

store ; he gave me particular instructions as to that, to which I conformed. After all this, he told me that I understood that business better than he did, and that as I did it, he would be perfectly satisfied.

15 Q. Did Mr. Seymour again see you while surveying, and when and where, and what passed in relation thereto ?

A. I saw Mr. Seymour about the 24th September, 1829, while I was surveying the Cayuga and Seneca canal between Waterloo and Geneva, in the stage, very near the Seneca river. He came along near where I was surveying at that time. He expressed a wish that I should next survey the Oswego canal, if it did not interfere with my arrangements. He also stated that he would be pleased if I would employ an engineer to assist me, a gentleman whose name I have forgotten, as he might be of service to me, having previously been engaged upon the canal. The stage stopped during this conversation.

16 Q. When Mr. Hutchinson came to you at Port Byron in August, 1829, was your plan of survey and the manner in which it had been thus far executed, fully explained to him ?

A. It was.

17 Q. Did he make particular inquiries in relation to it ?

A. He did.

18 Q. Did he state any objection or suggest any different plan ?

A. Not as I recollect.

19 Q. Did he make any complaint of your having proceeded in the survey before he had devised and communicated a plan for that purpose ?

A. He did not.

20 Q. Was there ever any agreement or understanding between you and him, either verbal or otherwise, that you were to conform to a plan of survey to be devised or suggested by him ?

A. There never was.

Adjourned to 4 P. M.

Present the committee.—21st, May 1852.

*Jacob Trumbour further examined.*

21 Q. Was there at any time any agreement or understanding between you and Holmes Hutchinson that you were to be in any manner under his control or direction in relation to your survey ?

A. There was not.

22 Q. Did you suppose yourself at all amenable to him for the manner in which your survey was performed ?

[This question is objected to on the ground that it seeks to bring out the supposition of the witness.]

A. I did not.

23 Q. When were you first informed or did you first learn that Mr. Hutchinson's survey was commenced upon a different plan from yours ?

[Objected to for being too general.]

A. In December 1829, in my interview with Mr. Hutchinson on my return at Utica.



24 Q. Had you previous to that time had any intimation from Mr. Hutchinson that he had adopted, or intended to adopt a different plan from yours?

A. I had not.

25 Q. Upon your so ascertaining at Utica in December 1829, that Mr. Hutchinson's plan differed from yours, was the difference stated to Mr. Seymour, and did he recommend a reference to the Canal Board?

A. After an interview with Mr. Hutchinson and ascertaining the difference in the surveys, I then called him to an interview with Mr. Seymour immediately. After having considerable conversation upon the subject, he suggested the propriety of referring both plans to the Canal Board, for the purpose of drawing an expression from them, as they had ultimately to pass upon that subject.

26 Q. Did Mr. Seymour, after this last interview, request you particularly to make any, and what survey of the canal?

A. He did. He requested me to go to Lockport to make a survey of that part of the canal about Lockport, where there was a controversy about surplus water, and also sent a letter by me to Lot Clark, which is now before the committee.

27 Q. Did you in consequence of that, make any, and what survey, and furnish to Mr. Seymour a rough map of the same?

A. I surveyed about Lockport a mile or so, from the top of the locks to below the lower village. I made a regular survey on the towing-path side, and on the berm side about Spalding's mill, a partial survey, for the purpose of representing the whole controversy. The location of the State property there is not yet finally settled. I furnished Mr. Seymour a map of the survey.

28 Q. Was that survey made upon your general plan for the survey of the canal?

A. It was upon both sides, but of that part about Spalding's mills and a little distance below on the berm side, the line was unsettled and in controversy, so that the survey was liable to be disturbed.

29 Q. Did Mr. Seymour, to your knowledge, use that map before the committee on canals of the Assembly, to point out the location of the State property at that place?

A. I think I saw the map before the committee. This is all I can say about it.

#### *Cross-Examined.*

30 Q. Why did you fully explain to Mr. Hutchinson in August, 1829, at Port-Byron, your plan of survey?

A. My reason was, that he inquired about the survey for his own information as I supposed, it being the first time that I saw him after our interview at Kingston in April.

31 Q. Was this information new to him; and did he appear pleased and gratified with your plan?

A. I presume it was not new to him, it having been explained to him at Kingston. I presume he was pleased, as I saw nothing to the contrary.



**32 Q.** Who paid you for the survey at Lockport, which you say you made at the request of Mr. Seymour; and how much did you receive for the same?

**A.** Mr. Seymour advanced twenty dollars, and agreed that I should be paid three dollars a day, and all my expenses as extra pay. After the survey was done at Lockport, Lot Clark paid me the balance.

**33 Q.** Against whom did you make out your bill for the said service, and what was the form of the receipt you gave when you received your pay?

**A.** At the suggestion of Lot Clark the account was made out, if I recollect right, against the Canal Commissioners. The form of the receipt I do not recollect.

**34 Q.** If it had not been for the said suggestion of Lot Clark, against whom would you have made out your bill?

**A.** Mr. Seymour stated to me in the first instance, that Lot Clark would pay me the balance; if he had not, I should have called on Mr. Seymour for it.

**35 Q.** Did not Mr. Hutchinson object to signing the paper you drew up at Kingston, upon the ground that it did not contain the whole agreement between him and you?

**A.** He did not.

**36 Q.** Did you not assure Mr. Hutchinson that you must have some paper writing or memorandum signed by him, or else that you would not go and see the Canal Commissioners upon the subject of the survey?

**A.** After we had agreed verbally to divide the survey, I then proposed to him to enter into a written agreement, and not to leave it in parol; I wanted to have it reduced to writing, and it was so done at my request. I do not recollect any further on this point.

**37 Q.** Will you say Mr. Hutchinson did not write an agreement on the same table, and about the same time that you wrote the one signed by yourself and him?

**A.** I mean to say that I know nothing of his writing any thing, about this subject at that time.

**38 Q.** Did he not, when you were standing in the office partially between the table and the door, read to you an agreement drawn up by him?

**A.** I have no recollection of it at all.

**39 Q.** Did you not decline signing an agreement drawn up by Mr. Hutchinson, on the ground that there could be no misunderstanding, as every thing was well understood, and say that it was inexpedient to have a more particular agreement until the views of the Canal Commissioners were more fully known?

**A.** I have no recollection of any paper written by Mr. Hutchinson; he signed one written by me; and there was not any such conversation had by me.

**40 Q.** Was there an understanding at or about the time the agreement was signed at Kingston, that your part of the maps should be made at Utica?

**A.** After the agreement was signed, a proposition was made by Mr. Hutchinson, that the maps ought to be made at Utica by the  
[A. No. 335.]

same person to which I proposed to have them made at Albany.— After considerable conversation on that subject, I sat down to write a memorandum, in the writing of which some difficulty arose in relation to it, what it was I cannot tell, the paper was abandoned, and the matter was left to future arrangement, each party assuring the other, that there could be no difficulty on that subject.

41 Q. Were not the maps to be made on the same scale, to have the same style of finish and uniformity in the returns?

A. I do not know that these particulars were mentioned.

42 Q. Did Mr. Hutchinson ever agree to conduct his survey according to the plan you adopted and pursued in making your general survey?

A. I cannot give his particular words; but after all his conversations which had transpired upon that subject, I came to the conclusion that he would do so.

43 Q. Did he ever agree to do so?

A. I cannot say that he did.

44 Q. Did you not promise Mr. Hutchinson at Kingston, to conform to his plan of survey and maps?

A. I did not.

45 Q. Did you not engage to take your field notes in so full a manner as to be able to conform to Mr. Hutchinson's plan of survey for all the work that you might do before he should submit his plan to and get the approbation of the Canal Commissioners?

A. I never did; nor ever heard of a proposition of that kind.

46 Q. Did you not inform Mr. Hutchinson, previous to leaving the survey about the first of October, 1829, that you had surveyed about twenty miles of the Erie canal?

A. I have no recollection of giving him any such information.

47 Q. Did you not see some blank books at a book-store in Utica; and did not Mr. Hutchinson explain to you the manner in which they were intended to be used in making his surveys? If so, describe the books and all that was said in relation to them?

A. In October 1829, probably about the time of the meeting of the Canal Commissioners at Utica, Mr. Hutchinson shewed me a parcel of blank books, which he said were intended for his survey, the books were of different sizes. He stated something about how he was going to keep his field notes, but I could not understand his statement. I told him that every surveyor kept his field notes in his own way. I understood the manner in which I kept mine, and presumed he understood his.

Adjourned to May 22d, 9 A. M.

IN COMMITTEE.—May 22, 9 A. M. 1832.

Present—Mr. M'DONALD,  
Mr. HOGEBOM,  
Mr. HAMMOND, Ch'n.

*Jacob Trumbour, one of the memorialists, further cross-examined.*

48 Q. Did you not, at Port-Byron in 1829, promise Mr. Hutchinson to take your field notes in so full a manner as to be able to conform to his plan in your copies for the returns?

A. I did not.

49 Q. Was it not at Utica in December in 1829, that you first objected to his manner of taking the field notes ; and did you not then, for the first time profess your inability to understand his plan of surveying ?

A. In December 1829, at Utica, being the first time that I was apprised of his manner of survey by its disclosure to me by Mr. Hutchinson, I objected to the whole of his plan, both field book and survey ; and stated to him, that I could not connect my survey with his and preserve uniformity. I then called him (as stated before) to an interview with Mr. Seymour.

50 Q. Was not this objection made by you, owing to your not understanding Mr. Hutchinson's said plan ; and did not this cause prevent the execution of the contract with the Commissioners ?

A. This objection was made, as I supposed, with a full knowledge of his plan as communicated to me by Mr. Hutchinson. With regard to that part of the interrogatory respecting the cause of preventing the execution of the contract, I answer I inferred some other cause unknown to me, from the circumstance of receiving the letter of the 29th November 1829, from Mr. Hutchinson, in which he stated that "Mr. Seymour held him responsible for the whole work."

51 Q. Had your plan of surveying, previous to December 1829, been well understood and consented to by Mr. Hutchinson ?

A. That is my opinion.

52 Q. Is that the fact ?

A. It is, and for the reasons already assigned.

53 Q. When you speak of that being the fact, do you mean that that is your opinion, or do you mean that Mr. Hutchinson consented to make his survey on your plan ?

A. I mean to say that is my opinion, founded upon previous conversations, in communicating to him my plan of survey, and his not objecting to it ; but his manner in those conversations irresistibly forced me to the conclusion that he consented.

54 Q. Have you now stated all the reasons that induced you to say in your memorial that Mr. Hutchinson had, previous to the meeting at Utica in December 1829, well understood and consented to your plan ?

A. All that I can now think of.

55 Q. Did the Canal Board, as such, at their informal meeting in the winter of 1830, express any opinion, take any vote, or give any directions in relation to the respective plans of surveying and mapping the canals, talked of or submitted to them by you and Mr. Hutchinson ?

A. As to the opinion, I know nothing ; as to the vote, I have stated in my memorial what I understood at the time concerning it ; with regard to directions, I know of none.

56 Q. Did the Surveyor-General, at that meeting of the Canal Board, make a motion that you and Mr. Hutchinson should each be allowed to make an atlas of your respective surveys ; and did such a motion prevail at that meeting ?

A. So I understood. I was present at the time the motion or suggestion was made.

57 Q. Did the Surveyor-General report to that Board, at that meeting, that he had examined the plans of the two surveys; and that your plan of survey was decidedly the best, and the one to be adopted?

A. It was my understanding at the time that he stated or reported that mine was best, and most proper to be adopted; and so is my memorial.

58 Q. What facts occurred at the time, which induced you so to understand?

A. I could not state any facts, other than being present, seeing the Surveyor-General, and hearing him express himself as I have represented.

59 Q. Did you, at any time previous to the informal meeting of the Canal Board in 1830, on submitting your plan of survey to the Surveyor-General, state to and inform him that your plan of survey was to be conformed to any other plan, and that such other plan had been or was to be submitted to the acting Canal Commissioners for their approbation? or did you give the Surveyor-General to understand, that in determining on a plan for the surveys, you were left to your own judgment, without the control or instructions of others?

A. I have no recollection of making communications to him of that kind, one way or the other.

60 Q. When Mr. Hutchinson left you at Kingston, in April 1829, after signing a memorandum with you of the 13th of that month, did you contemplate entering into a written contract with the Canal Commissioners for surveying your part of the canal?

A. I cannot say what my ideas were about it then; but when I first met Mr. Seymour, I suggested to him the propriety of entering into some kind of contract or agreement.

61 Q. Did you, after your second proposition to the Canal Commissioners for surveying the canals had been rejected, request them, or either of them, to give you half of the job without the consent of Mr. Hutchinson, or did you make any request of that purport?

A. As to the time of the rejection, I do not know any thing. There was a suggestion from them, or one of them, that it might be divided; upon which considerable conversation was had; but whether I requested them to give me one half without seeing Mr. Hutchinson, I have no recollection.

62 Q. Did any person inform you that a written contract for performing the survey would be necessary, and security required; if so, who, and when?

A. The first I heard on that subject, was when Mr. Seymour made me the first advance of \$250, in August 1829. At that time he stated, that before he would make any farther advances, it would be necessary to make a written contract. I have no recollection of his saying any thing of security.

63 Q. Why did you not then proceed to enter into the written contract with Mr. Seymour?

A. I can give no particular reason. I stood ready to make the written contract at any time, and have always told him so; and at other times have offered to enter into a written contract, and give any security required. In the winter of 1830, I drew a written

contract and presented it to him, and proposed to give him sufficient security if he wished it.

64 Q. Did Mr. Seymour make any objections to entering into a written contract with you; if so, what were they, and when first made?

A. He did so object after the interview in December 1829. He first objected in the winter of 1830, the time alluded to in the last answer, and may have done so at other times in that winter. One of his objections was a want of uniformity in the survey; the other objection was, that he held Mr. Hutchinson responsible for the whole survey.

65 Q. What plan of surveying the canals had you in view, when you made the first proposition to the Canal Commissioners in 1828 for the job?

A. I had the same plan in view that I pursued, and I then communicated and explained it to Col. Bouck.

66 Q. Did you then expect that that plan, if executed, would cost the State more than five thousand dollars?

A. My view of the case then was, that as I had some young men under my instruction, I could do it for that sum; relying much upon the facilities which I then imagined the documents in the canal room would afford.

47 Q. When and by whom was it first communicated to you, that a uniform plan would be necessary in the survey?

A. It was always my idea from the beginning. I do not know that any thing particular was said about it until the discovery of the difference in the two surveys, and then the conversation about it became general.

68 Q. Were the blank field-books shewn to you by Mr. Hutchinson at Utica, ruled with two parallel red lines transversely; and did not he then state to you, that he should survey by running a base line, and taking offsets to the exterior bounds of the canal?

A. To the first branch of the question, I have no distinct recollection about the red lines, but they may have been there. As to the residue of the interrogatory, I have no recollection of his saying any of his surveying by a base line and offsets, and it could not have appeared so from the book; the two red lines would have represented the sides of the canal.

69 Q. Did Mr. Hutchinson tell you at Kingston he had surveyed canals for the purpose of ascertaining the quantity of land, or designating their boundaries; and that he did so by running a single line on the towing path, and taking offsets to the exterior boundaries of the canal?

A. He did not; and I think that if he had represented that plan, I should have remembered it. He did not say any thing on that subject.

*Direct examination resumed.*

70 Q. When Mr. Hutchinson shewed you his blank books in October 1829, was it because he had not stated his plan of survey, that you could not understand his method of keeping his field-notes?

A. I can only say, that being ignorant of his plan of survey, he having withheld it from me, probably may have been the reason why I did not understand his explanation about the manner of keeping his field-notes.

71 Q. You have stated in your cross examination, that your plan of survey was communicated to Col. Bouck at the time of your first proposition, what did he then say about it?

A. My impressions were that he was, as he appeared to be, satisfied with it. He said nothing against it.

72 Q. When, for the first time, did Mr. Seymour or Col. Bouck interpose any objection to your plan of survey?

A. Upon that subject, in my intercourse with those gentlemen, they never pretended to find fault with my plan of survey, but always spoke well of it in my presence.

JACOB TRUMBOUR.

Taken and sworn in committee, }  
24th May, 1832. }  
J. HAMMOND, *Chairman*.

(No. 30.)

*Second Deposition of Holmes Hutchinson.*

*June 22d, 1832.*

IN COMMITTEE—Present, Mr. HAMMOND, *Chairman*.  
Mr. M'DONALD,  
Mr. HOGEBROOM.

*Holmes Hutchinson*, a witness, produced and sworn, &c.

1 Q. Have you a memorandum of an agreement between yourself and Judge Trumbour; and if so, produce it?

A. I have, and now produce it.

[It is marked Exhibit X, in committee, June 22, 1832.]

"It is agreed between Jacob Trumbour and *Holmes Hutchinson*, that maps of survey for the Erie canal, and the Champlain, Oswego, and Cayuga and Seneca canals, shall be made at Utica, from the rough maps first to be plotted from the survey. It is agreed that they shall be made on a scale of  $\frac{1}{2}$  chains to the inch, and on the best of super-royal drawing paper, and that the style of finish and completion shall conform to a map made by E. F. Johnson, of part of the village of Whitesborough, as far as the different surveys made by them will admit; and that the whole shall be prepared to be bound in atlas form. And Jacob Trumbour agrees that the persons who shall be employed by Mr. Hutchinson to make the fair maps, shall be employed to complete the fair maps of the lines surveyed by the said Trumbour, and it is agreed that the price shall not exceed \$3.50 per day while employed. This agreement is understood to be for the purposes of having a perfect uniformity in the whole maps, as it respects size, paper, appearance, and the general topography and finish, &c.



“And it is further agreed, that the field-notes shall be written out from the survey, in a book to be prepared for that purpose. The field-book shall be made of ruled paper, and written in a good fair hand, and this book shall have lines drawn across and near the top, representing the canal and all the important monuments and lines that cross the same, with spaces to put down the offset between the inner edge of the tow-path or water line, and the outward boundary of the tow-path side of the canal. This sketch is intended for the purpose of illustrating the field-notes of the survey, and the whole shall be made to correspond as near as the different methods of doing the work will admit of.

“And it is further agreed, that Henry Seymour Esq. Canal Commissioner, with whom contracts are to be made, to make those surveys and maps, as contemplated by the Revised Laws, shall have the power, and he is hereby authorised to settle any question of difference that may arise between the parties in the fulfilment of this agreement, and his opinion to be final and conclusive; and he is authorised to retain such sums of money from the amount to be received for this work, as may enable him to compel or carry into effect the intention of the parties.”

2 Q. When and where was that memorandum written?

A. It was written in Albany, in a room occupied by Judge Trumpbour, at the Columbian Inn, in or about the last of January, or beginning of February, in the year 1830, and soon after the informal meeting of the Canal Board referred to in my former deposition.

3 Q. Is the body of that memorandum in your hand writing, and is any of the interlineations in the same in the hand writing of Judge Trumpbour; if so, point them out?

A. The body of it is in my hand writing. Some of the interlineations are in the hand writing of Judge Trumpbour. The following words were written by him, to wit: “As far as the different surveys will admit.” 2dly. “To make the fair map.” 3dly. “The map.” These passages are interlined in the fore part of the instrument.

4 Q. Did you intend that this agreement should conform to your original agreement with Judge Trumpbour?

[This question was objected to on the ground that this is an inquiry into the intention of the witness. Upon which the question is modified as follows:]

5 Q. Does this memorandum conform to the agreement you made with Judge Trumpbour at Kingston, as you understood it?

A. It does in part. It goes more into particulars, and has some modifications which were made for the purpose of enabling Judge Trumpbour to procure his contract of the Canal Commissioners for the said survey.

6 Q. Was this memorandum made at the request of the Canal Commissioners, or either of them?

A. The acting Canal Commissioners requested Judge Trumpbour and myself to arrange our surveys so that they would be willing to execute the contract, or a contract, with Judge Trumpbour.

7 Q. Why was not this memorandum of an agreement signed by Judge Trumbour?

A. The Canal Commissioners requested that an agreement should be made to re-survey that part of the Erie canal which Judge Trumbour had surveyed, to produce uniformity in the surveys and maps. I supposed that that paper contained our exact understanding. It was intended to be engrossed and signed. It was the agreement between us. The request of the Canal Commissioners alluded to in the beginning of this answer, was made subsequent to the writing of the above memorandum of an agreement.

8 Q. Have you any other memorandum of Judge Trumbour in relation to the said surveys; if so, produce it?

A. I have, and now here produce it.

[Marked Exhibit Z, and read in committee, June 23, 1832.]

9 Q. In whose hand writing is this second memorandum?

A. The first page is in the hand writing of Judge Trumbour, the residue of the writing is in my hand.

10 Q. When and where was that memorandum written?

A. I think it was in Judge Trumbour's room, a day or two after the foregoing memorandum herein first mentioned was written.

11 Q. Did you at any time, and when, agree with Judge Trumbour as to a re-survey of that part of the Erie canal that had been surveyed by him, so as to make it conform to your survey?

A. We did make such an agreement, at or about the time of writing the last memorandum, marked Z; the said memorandum being an offer, and not an agreement.

12 Q. What was the substance of the agreement spoken of in your last answer, and why was it not reduced to writing?

A. The substance was, that I was to re-measure one-half of the line surveyed by Judge Trumbour. This agreement or offer on my part was stated to Col. Bouck, which he understood and recapitulated to us. At that time I supposed it would be reduced to writing. Judge Trumbour, however, after we had been in Col. Bouck's room some time, stated, as I recollect, as follows: that he should have to re-survey the line that he had once surveyed, and it would be inquired of him why he did so; that he would not know what answer to make to such inquiry, and that he would not agree to it; and he took his hat and left the room.

13 Q. What were the inducements that prompted you to make that offer?

A. It was done to enable Judge Trumbour to get its [his] contract with the Canal Commissioners, and to produce entire uniformity.

*Cross-examined on the part of Judge Trumbour.*

14 Q. At the informal meeting of the Canal Board did you understand the Surveyor-General to express an opinion that a full description of the survey ought to be given in writing in the returns to be made with the maps?

[This question was objected to.]



A. I understood him as suggesting that an additional copy of the field-notes should be added to my field-book

15 Q. Did you propose to Judge Trumpbour, after this informal meeting, to have a written description of your survey made, conforming as near as practicable, to the plan of description submitted by him?

A. I never did. There was a proposition to add an additional copy of the field-notes.

16 Q. Did or not Judge Trumpbour propose to the Canal Board, at the time of the informal meeting, to make the calculations of the outlines of your survey, so far as it had then been made, for the purpose of giving such written description?

[This question is objected to.]

A. I have no knowledge of his ever having made a proposition of that kind.

17 Q. Was or not the memorandum marked Exhibit X, and produced by you, any thing more than a proposition or an agreement between you to be considered?

A. I considered it the agreement, the arrangement and understanding between us.

18 Q. Was or not that memorandum prepared by you before you went to Judge Trumpbour's room, at the time you first shewed it to him?

A. My recollection is, that it was written in Judge Trumpbour's room.

19 Q. Was or not that memorandum prepared by you in consequence of the suggestion of the Surveyor-General at the informal meeting of the Canal Board?

A. The part of it that describes the method of making the field book, in which it is said, the lines shall be drawn across the book near the top, instead of the centre, as it was in the field book exhibited, was to give space for an additional copy of the field notes. The Surveyor-General did not say there must be an agreement. The memorandum was not prepared at the Surveyor-General's suggestion, except the part of it above alluded to.

20 Q. Was or not the proposition contained in that memorandum made by you, upon the supposition that Judge Trumpbour's survey and the description thereof should be completed upon the plan he had commenced?

A. It was made upon the supposition that it should conform exactly to my survey, except as stated in the last answer.

21 Q. Did not you and Judge Trumpbour attempt to make a written description of your survey, conforming to his plan of field book?

A. We did not.

22 Q. Did you not shew that memorandum to Mr. Seymour, Canal Commissioner, and if so when for the first?

A. I shewed it to him about the beginning of the present month, and I think he never saw it before.

23 Q. Did you not, about the time of shewing that memorandum to Judge Trumpbour, state to him, that if such agreement was

entered into between you, Mr. Seymour would approve of it, and that he had assented to be an umpire between you?

A. I never did.

24 Q. Did you not state to Judge Trumpbour that your object in proposing the agreement, as stated in the memorandum, was to have the maps and descriptions conform, so that the difference in the surveys would not be perceptible? [Objected to.]

A. I never made a statement of that kind that I recollect.

25 Q. Did you not state to Judge Trumpbour that you would draw the outlines of the State property upon your map, so as to give them the appearance of conforming to his survey?

A. I never did.

26 Q. Did not Judge Trumpbour decline to enter into an agreement with you upon the basis of the terms contained in the memorandum marked exhibit X?

A. I understood him as consenting to the conditions fully, at the time of making the interlineations. I never understood him as objecting to the agreement at all.

27 Q. Did not Judge Trumpbour express to you an entire unwillingness to submit himself to the umpirage of Henry Seymour.

A. He did not.

28 Q. Was there any thing said between you and Judge Trumpbour, in your interview at Kingston, about Mr. Seymour's being umpire between you in relation to any difficulties that might arise?

A. I think there was not. It was first introduced in this paper last referred to.

29 Q. Was there any thing said at the interview at Kingston about Mr. Seymour retaining any part of the money to be paid for the work?

A. There was not. It was first introduced in the paper last referred to.

30 Q. Was there any thing said in your interview at Kingston about making the field notes correspond as nearly as the different methods of doing the work would admit?

A. At Kingston, Judge Trumpbour agreed to conform to my survey.

31 Q. Have you any other answer to make to the last question?

The counsel propounding the 31st question puts it in the following form:

32 Q. Can you give a more direct or explicit answer to the 30th question? (The 32d question is objected to.)

A. I supposed his survey would conform exactly to mine, and in the notes and field books; and I further answer to the 30th question, that there was not any such conversation.

33 Q. In what particulars is the memorandum marked exhibit X a modification of the agreement made between you and Judge Trumpbour at Kingston?

A. The modification consists in the attempt to make the surveys that had been made correspond, and in other respects goes more into detail, and may also include the arrangement about the additional copy of the field notes. The remaining part of the memorandum was intended to guard against any difficulties which might otherwise

arise, as difficulties had already occurred with respect to the verbal understanding at Kingston.

34 Q. In what respect is the memorandum marked exhibit X more particular than the agreement made at Kingston in relation to the matters that were the subject of that agreement?

[Objected to, on the ground that it is in substance already answered.]

A. It is more particular in describing the method of the survey; and by that I include the field notes and maps.

35 Q. If that memorandum was understood to be the agreement between you, and difficulties had already arisen in relation to the agreement made at Kingston, why was it not signed by the parties?

A. There was a subsequent difficulty rose, as I have already related. It was not signed, because it was not engrossed. I supposed it would be engrossed and signed; before that was done a difficulty rose about the re-survey, which prevented the signing of it. The second agreement, offer, or paper, marked Z, was intended to modify or alter the original agreement only as to the re-survey.

36 Q. Was Judge Trumpbour ever requested to sign the memorandum marked X, or an engrossed copy of it?

A. I think he was not.

37 Q. Was any copy of it ever made for signature?

A. I think not.

38 Q. Was the arrangement you have spoken of, based upon memorandum Z, intended to supersede or vary any part of the agreement purporting to be contained in memorandum X?

[This question is modified at the request of the witness, as follows:]

39 Q. Was the arrangement you have spoken of for re-surveying the line of the canal which had been surveyed by Judge Trumpbour, intended to supersede or vary any part of the agreement as purporting to be contained in memorandum X?

A. It would some parts of it. It was so intended.

40 Q. Was the arrangement for re-surveying spoken of, intended to supersede the agreement as contained in memorandum X?

A. It was intended to vary some parts of it.

41 Q. Have you not several times stated in the presence of this committee, that the arrangement made for resurveying, was not intended to supersede or vary the agreement contained in memorandum X, except so far as it related to the re-survey?

[The question was objected to on the ground that what the witness has several times said, ought not to be the ground of a question.

The question is deemed admissible.

Judge Hogeboom thinks the question inadmissible.]

A. I believe I have so stated. When I spoke of the survey, I meant to include the field book and maps.

42 Q. After the informal meeting of the Canal Board, did you have several meetings with Judge Trumpbour, with a view of making some arrangement in respect to the survey?

A. I did.

43 Q. In those interviews, did you or not, express great dissatisfaction with the Surveyor-General for having required a written description of the survey, and for having given a preference to Judge Trumpbour's survey over that adopted by you?

A. I did not. I never understood the Surveyor-General's opinion as stated in the question.

44 Q. If the Canal Commissioners required a re-survey of that part of the canals surveyed by Judge Trumpbour, why was not that stated in the memorandum of agreement, marked X, proposed by you to him, as you say at their request?

[This question is objected to on the ground that it is an attempt to argue with the witness.]

A. The request of the Canal Commissioners was not made until after the memorandum X was written.

45 Q. At the time of the interview with Col. Bouck, when the agreement for a re-survey was stated, did he know of, or was, or had any thing been said to him about the agreement expressed in memorandum X?

A. I think he had previously been informed of the understanding between Judge Trumpbour and myself, as expressed in memorandum X.

46 Q. Did, or not, Judge Trumpbour shortly after you had showed to him memorandum X, prepare and deliver to you by way of proposition, or otherwise, a memorandum of an agreement, upon the subjects contained in memorandum X, but differing in its terms and conditions?

A. I have no recollection of his having done so; I think he took a copy of this agreement.

47 Q. If he took a copy, why was it not signed?

A. I am not perfectly sure in relation to his taking a copy.

48 Q. When and how did you get possession of the memorandum marked Z?

A. I must have retained it about the time it was made, for I have seen it occasionally since.

49 Q. Was that memorandum ever submitted to you as a proposition for an agreement?

A. I think it was.

50 Q. When, where, and by whom was it first submitted?

A. I think it was first submitted at the time it was written, by Judge Trumpbour, at his room, where I was present, and wrote my memorandum at the same time, on the same paper.

51 Q. Is not that memorandum written in pencil mark, and does not the paper contain other pencil memorandum not connected with the proposition?

A. The memorandum is written in pencil mark, and all the writing and figures on that paper are connected with that negotiation, I think.

52 Q. Was there in the course of that negotiation, a proposition made by Judge Trumpbour, to divide the survey, by having one take the Erie canal at three thousand dollars, and the other take the other canals at two thousand?

A. There were a variety of propositions in the course of that negotiation. There might have been such a proposition as that spoken of, but I do not recollect particularly.

53 Q. How did Exhibit Z come into your possession?

A. It was written by Judge Trumbour, and shewn to me as a proposition, and presented to me by him. All the writing which now appears upon it, was then on it.

54 Q. Why were you willing to give Judge Trumbour the two hundred dollars mentioned in the proposition Z?

A. In order to reconcile the difference between us.

HOLMES HUTCHINSON.

Taken and sworn in }  
the committee. }

J. HAMMOND, *Chairman*.

NOTE.—At the time of putting in the answer to the last interrogatory above written, Mr. Hutchinson also stated that, "the arrangement was more than two hundred dollars."

J. HAMMOND, *Chairman*.









**No. 336.**

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**IN ASSEMBLY,**

**June 28, 1832.**

**[SECOND MEETING.]**

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**REPORT**

**Of the select committee, relative to the arrangement  
of the congressional districts of the State.**

**Mr. Otis, from the select committee to whom was referred so  
much of the Governor's message as relates to the arrangement of the  
congressional districts of the State of New-York,**

**REPORTED :**

**That they have taken into consideration the various matters which  
they suppose ought to affect the arrangement intended ; and have,  
in their determination, districted the State in a manner as conve-  
nient, equal and expedient, as the inherent difficulties of the case  
will allow.**

**Your committee have come unanimously to the opinion, that the  
arrangement proposed in the annexed schedule is the best that can  
well be made, and ask leave to introduce a bill accordingly.**

**[A. No. 336.]**



## SCHEDULE.

COUNTIES.	Mem	Population	Total	Plus	Minus
Suffolk, .....	1	26,780	49,058	923	
Queens, .....		22,278			
Kings, .....		20,539			
Richmond, .....	1	7,084	37,011	14,481	11,124
Rockland, .....		9,388			
New-York, .....		207,021			
Westchester, .....	1	36,476	49,177	1,032	
Putnam, .....		12,701			
Dutchess, .....		50,926			
Orange, .....	1	45,372	48,931	796	2,763
Sullivan, .....		12,372			
Ulster, .....		36,559			
Greene, .....	2	29,522	97,378	1,108	
Columbia, .....		39,952			
Schoharie, .....		27,904			
Albany, .....	1	53,560	50,948	2,813	
Rensselaer, .....		49,472			
Schenectady, .....		12,332			
Saratoga, .....	1	38,616	50,526	1,391	5,520
Warren, .....		11,795			
Essex, .....		19,387			
Clinton, .....	1	19,344		3,237	3,317
Washington, .....		42,615			
Montgomery, .....		44,918			
Hamilton, .....	1	51,372	47,670	380	465
Otsego, .....		36,352			
St. Lawrence, .....		11,318			
Franklin, .....	1	48,515	42,062	3,127	
Jefferson, .....		14,958			
Lewis, .....		35,869			
Herkimer, .....	2	71,326	98,430	3,030	
Oneida, .....		27,154			
Oswego, .....		58,974			
Onondaga, .....	2	39,037	98,011	1,741	188
Madison, .....		47,947			
Cayuga, .....		23,698			
Cortland, .....	2	36,545	87,947		8,323
Tompkins, .....		27,704			
Tioga, .....		17,582			
Broome, .....	1	32,933	50,515	2,380	
Delaware, .....					

COUNTIES.	Men.	Population.	Total.	Plus	Minus.
Chenango,.....	1	37,404			10,731
Yates, .....	1	19,019			
Steuben, .....	1	33,975	52,994	4,859	
Ontario,.....	1	40,167			7,968
Seneca, .....	1	21,031			
Wayne, .....	1	33,551	54,582	6,447	
Livingston, .....	1	27,717			
Allegany, .....	1	26,218	53,935	5,800	
Monroe, .....	1	49,920		1,765	
Genesee, .....	1	51,992		3,857	
Niagara, .....	1	18,485			
Orleans, .....	1	18,773	37,258		10,877
Erie, .....	1	35,710			12,425
Cattaraugus, .....	1	16,726			
Chautauque,.....	1	34,658	51,384	3,249	

The minus and plus are not to be considered a part of this schedule.

**No. 337.**

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**IN ASSEMBLY,**

**June 30, 1832.**

**[SECOND MEETING.]**

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**REPORT**

**Of the select committee, on the petition of sundry inhabitants of the counties of Queens and Suffolk.**

**Mr. King, from the select committee to which was referred the petition of sundry inhabitants of the counties of Queens and Suffolk, for the protection and preservation of trout in the streams of Long Island,**

**REPORTED :**

**That as well from their own knowledge, as from the statements contained in the respective petitions upon this subject, that the species of fish called trout, from the means now used to take them at unseasonable periods of the year, is in great danger of being entirely destroyed, they are of opinion that for the purpose of more effectually protecting this most delicate of the finny tribe from the rapacious and untimely pursuit of those whose object is to carry them to market, when from their condition they are unfit for food, requires a special act in aid of the provisions of the Revised Statutes; and they have accordingly directed their chairman to prepare and present a bill for that purpose.**



**No. 338.**

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**IN ASSEMBLY,**

**July 2, 1832.**

**[SECOND MEETING.]**

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**COMMUNICATION**

**From Doctors Rhineland and De Kay.**

**MY DEAR SIR,**

The condition of the emigrants now pursuing their way to the United States, has attracted our attention. The miserable condition of these destitute objects of humanity has induced us to ask of you the favor to bring before the honorable body over which you preside, their situation and destitute condition. It is not upon these principles alone that we invoke your sympathy and support, but upon those laws of self-preservation which are addressed to the conviction of every member of this community. If hospitals are erected, where all emigrants can be purified and cleansed, the health of our State will be preserved, and the lives of many human beings, which would be otherwise sacrificed. If these emigrants are denied the usual facilities, they will obtain them by other means, which may be injurious and prejudicial to the health of our citizens. May we ask that such provision may be secured to them, as will subserve the great objects of humanity, and preserve the honor of our State, for which she is so justly distinguished.

We are, very truly,

**T. R. RHINELANDER,  
J. E. DE KAY.**

**To the Hon. CHARLES L. LIVINGSTON.**

**[A. No. 338.]**





## **TITLES OF ACTS**

**Passed by the Legislature of the State of New-York,  
1832.**

1. An act to authorise the superintendents of the poor of the county of Broome to sell land.

2. An act to revive and amend the act entitled "An act to authorise the building of a toll-bridge over the Hudson river, passed 2d April, 1825, and the act amendatory thereof," passed May 2d, 1829.

3. An act authorising the board of supervisors of the county of Monroe, to raise money to complete the jail of said county.

4. An act to incorporate the Newburgh whaling company.

5. An act relative to the collection of taxes in the town of Franklinville, in the county of Cattaraugus.

6. An act to incorporate the mutual benefit society of mechanics in the city of New-York.

7. An act to amend the act entitled "Of courts held by justices of the peace."

8. An act for the improvement of the literature fund.

9. An act relating to jurors in the county of Franklin.

10. An act directing a special circuit court to be held in the county of Oswego.

11. An act to amend and extend the act entitled "An act to incorporate the Sodus bay bridge company," passed the 9th day of April, 1819.

12. An act respecting the loan officers of the city and county of New-York.

13. An act to empower the commissioners of highways of the town of Watervliet to open a highway in said town.

14. An act to incorporate the Hebrew benevolent society of the city of New-York.

15. An act authorising certain persons therein named, to change their names.

16. An act altering the name of Jacob Adrian Van Den Heuvel.

17. An act granting authority to the supervisors of the county of Westchester to raise a sum of money to purchase land, and make improvements for the use of the poor.

18. An act to divide the town of Pembroke, in the county of Genesee.

19. An act to incorporate the city of Utica.

20. An act to incorporate the New-York annual conference ministers mutual assistance society.

21. An act authorising Henry Barclay to maintain a toll-bridge across the Esopus creek at the village of Ulster.

22. An act to change the name of the town of Brantingham, in the county of Lewis.

23. An act to incorporate the Smiths' beneficial society in the city of New-York.

24. An act to amend title 1, chapter 3, part 3 of the Revised Statutes, concerning courts of justice, and the powers and duties of certain judicial officers in the city of New-York.

25. An act extending the time for the collection of taxes in the town of Bethlehem, in the county of Albany.

26. An act extending the powers of county superintendents of the poor.

27. An act to incorporate the president, directors and company of the Brooklyn bank.

28. An act to extend for a limited period the charter of the Bank of Lansingburgh.

29. An act to incorporate the Hargrave cotton factory.

30. An act in addition to the act entitled "An act to incorporate the Brunswick and Pittstown turnpike company" passed April 18, 1831.

31. An act extending the time for collection of taxes in the several wards of the city of Albany.

32. An act to incorporate the North American mining company.

33. An act to incorporate the Deposit bridge company.

34. An act to incorporate the village of Medina.

35. An act concerning the State prison at Mount-Pleasant.

36. An act to incorporate the president, directors and company of the Steuben county bank.

37. An act to amend the charter of the Phoenix fire insurance company in the city of New-York.

38. An act to incorporate the Hudson river coal company.

39. An act authorising the assessment and collection of a certain sum of money in school district number two, in the town of Watervliet, county of Albany.

40. An act to extend and enlarge the corporate powers of the Farmers' and Mechanics' manufacturing company of New-Berlin.

41. An act authorising Augustus Gardner to maintain the dam erected by Thomas Shankland across the Susquehannah river, near Cooperstown.

42. An act to incorporate the Arkwright cotton factory, in the town of Pittsfield, Otsego county.

43. An act to enable the mayor, aldermen and commonalty of the city of New-York to raise money by tax.

44. An act to change the name of the town of Plato, in the county of Cayuga.

45. An act relating to the relief and support of the poor in the city and county of Albany.

46. An act to amend the charter of the Troy insurance company.

47. An act for the relief of Elizabeth Potts, Jane Russel and Isabel Blakie, sisters of David Campbell, late a resident alien deceased.

48. An act to incorporate the Walden company.

49. An act to authorise George W. Cockman and Eliza Cockman to change their names.

50. An act to change the name of the associate reformed congregation of Neely-Town in Orange county.

51. An act in relation to the Troy water works company, and for insuring to the city of Troy a supply of water for the extinguishment of fires, and other purposes.

52. An act to incorporate the Dansville and Rochester rail-road company.

53. An act to incorporate the Oneida lake canal company.

54. An act to authorise the erection of a new jail in the county of Chautauque.

55. An act to amend an act entitled, "An act to consolidate and amend the charter of the village of Watertown."

56. An act to divide the Ninth ward of the city of New-York into two wards.

57. An act to incorporate the Oneida insurance company.

58. An act providing for the appointment of an additional special justice, for preserving the peace in the city of New-York, and for other purposes.

59. An act for the relief of the heirs of John Thompson.

60. An act to incorporate the Cherry-Valley cotton and woollen factory.

61. An act to incorporate the Dutchess rail-road company.

62. An act to incorporate the Mayville and Portland rail-road company.

63. An act for the relief of the heirs of James F. Gross, an alien.

64. An act to amend the act incorporating the president, directors and company, of the Rensselaer and Columbia turnpike road.

65. An act to authorize the board of supervisors of the county of Wayne, to levy a tax on the town of Lyons, to build a bridge in said town.

66. An act for the relief of the heirs of Pierre Frederick Mairat, an alien.

67. An act for the relief of Jacob Conrad and Jonah Moore.

68. An act relative to the appointment of inspectors of the election to be held on the second Tuesday of April, in the year one

thousand eight hundred and thirty-two, for cha rto fficers in the Fifteenth ward of the city of New-York.

69. An act to incorporate the Great Ausable rail-road company.

70. An act to provide for the erection of a new stone jail in the county of Cayuga.

71. An act to incorporate the American manufacturers' mutual assurance association.

72. An act to divide the town of Deerfield in the county of Oneida.

73. An act to incorporate the Oswego cotton manufacturing company.

74. An act to incorporate the Auburn and Owasco canal company.

75. An act to amend an act entitled, " An act to incorporate the Ithaca and Owego rail-road company," passed January 28, 1828.

76. An act to alter the time of holding the courts of common pleas and general sessions, in and for the county of St. Lawrence.

77. An act to annex a part of the town of Kingston to the town of Saugerties, in the county of Ulster.

78. An act to extend the time for completing the canal and locks on the Seneca river in the county of Onondaga.

79. An act authorising the Mohawk and Hudson rail-road company to construct a branch rail-road, and for other purposes.

80. An act amending an act for the relief of Gideon Castle, passed February 4th, 1831.

81. An act to divide the town of Volney, in the county of Oswego, into three towns.

82. An act vesting the title of a certain lot in the city of New-York, escheated to the people of this State, in Elizabeth Idley, her heirs and assigns forever.

83. An act authorising Alexander Crookshank, and other persons therein named, to change their names.

84. An act to confirm the title of certain real estate in the city of New-York, in the trustee of Edward Thorne, and to authorise the sale thereof.

85. An act to extend the charter of the Sidney bridge company.

86. An act authorising and directing the final settlement of the claims of John Jacob Astor against this State.

87. An act vesting the title to certain lands in Joseph Ross, an alien.

88. An act for the relief of the Erie county medical society.

89. An act to make certain alterations in the map or plan of the city of New-York.

90. An act concerning the collection of taxes in the county of Kings.

91. An act to incorporate the Fishkill factory.

92. An act for the relief of the town of Aurora.
93. An act to amend an act entitled, "An act to incorporate the New-York and Harlaem rail-road company," passed 25th April, 1831.
94. An act to provide for opening a road through certain lands belonging to the school fund, in the counties of Clinton and Franklin.
95. An act to alter the name of the town of Arlington in the county of Tioga.
96. An act to incorporate the Ithaca and Geneva rail-road company.
97. An act authorising the board of supervisors of the county of Chenango, to audit certain accounts.
98. An act to divide the town of Ellicott, in the county of Chautauque.
99. An act authorising payment for certain Indian improvements.
100. An act to authorise the erection of a church on the public square in the village of Geddes.
101. An act to alter the map of the city of New-York, by laying out thereon a new street in the Twelfth ward of the said city.
102. An act relating to the village of Kingston.
103. An act authorising the appointment of a supreme court commissioner, to reside in the town of Geneseo, in the county of Livingston.
104. An act to incorporate the Buffalo marine hospital.
105. An act to locate the office of surrogate in the county of Westchester.
106. An act to confirm the classification of justices of the peace of the town of Farmersville, in the county of Cattaraugus.
107. An act to amend article second, title first, of the sixteenth chapter, part first, of the Revised Statutes, entitled, "Of the persons liable to work on highways, and the making assessments therefor."
108. An act to vest the title of certain real estate in the heirs and devisees of Joseph Bragington.
109. An act relative to the oath of justices of the peace.
110. An act to repeal an act concerning a road in the county of Delaware
111. An act to amend an act entitled "An act to incorporate the Hallett's Cove railway," passed April 15, 1828.
112. An act authorizing the board of supervisors of the county of Washington, and the trustees of the village of Whitehall, to raise certain moneys to defray the expenses of rebuilding bridges in the village of Whitehall.
113. An act relating to the inspection of sole-leather in the counties of Ontario, Genesee and Erie.

114. An act directing the printing and distribution of the poor laws.

115. An act granting authority to Hugh Laing, to erect and maintain a dock or wharf at Old Ferry Point, in the town and county of Westchester.

116. An act to incorporate the Niagara river hydraulic company.

117. An act altering the charter of the Clinton Woollen manufacturing society.

118. An act relative to loans of one thousand seven hundred and eighty-six, one thousand seven hundred and ninety-two, and one thousand eight hundred and eight.

119. An act to amend an act entitled "An act to extend for a limited period, the charter, and to increase the capital stock of the Canajoharie and Palatine bridge company," passed April 25, 1831, and for other purposes.

120. An act to amend an act for the better security of mechanics and others, erecting buildings in the city and county of New-York.

121. An act for the relief of the heirs of Thomas Smith, deceased.

122. An act providing for certain expenditures by the county of Richmond.

123. An act to incorporate the trustees of the Genesee manual labor seminary.

124. An act to incorporate the Great Falls manufacturing company.

125. An act authorising the trustees of the village of Canandaigua to organize a hook and ladder company.

126. An act to appoint commissioners to lay out a road from the village of Frankfort in the county of Herkimer, to West-Winfield, in the same county.

127. An act authorising the trustees of Fort-Covington Academy to erect an edifice on the public square in the village of Fort-Covington, and for other purposes.

128. An act relating to the supreme and circuit courts.

129. An act to incorporate the Buffalo and Erie rail-road company.

130. An act to amend and continue in force, an act entitled "An act to authorise the erection of a toll-gate on the great road leading from Plattsburgh to Chateaugay Four Corners," passed February 14, 1823, and for other purposes.

131. An act to incorporate the Rensselaer and Saratoga rail-road company.

132. An act to incorporate the Aurora and Buffalo rail-road company.

133. An act for the protection of the side-walks in the village of Fort-Covington.

134. An act relative to the board of supervisors of the county of Warren.

135. An act authorising the commissioners of highways of the town of Geneseo, to lay out a public highway in said town, of a less width than three rods.

136. An act to constitute the colored children of Rochester a separate school.

137. An act for the relief of the town of Otisco.

138. An act relating to the Capitol, and the grounds connected therewith, and belonging to the people of this State.

139. An act to renew the charter of the Stephentown and Nassau turnpike company.

140. An act further to amend an act entitled "An act to reduce the laws concerning the village of Johnstown into one law.

141. An act regulating the measuring of grain in the city of New-York.

142. An act to incorporate the Rochester institute of practical education.

143. An act granting to Elias Stone and Andrew Merritt, the privilege of establishing and maintaining a ferry across the Allegany river.

144. An act to authorise the supervisors of the county of St. Lawrence to raise money to repair a bridge over the Grass river at Columbia village, in the town of Madrid in said county.

145. An act to incorporate the Buffalo lyceum.

146. An act authorising the supervisors of the county of Greene to sell and convey the poor-house lot and establishment in said county, and for other purposes.

147. An act to authorise the board of supervisors of the county of Essex to raise money by a tax for the erection of a fire-proof clerk's office.

148. An act authorising the commissioners of highways of the town of Little-Falls, to build a bridge across the Mohawk river in said town.

149. An act to amend the charter of the Bank of Chenango.

150. An act to incorporate the president, directors and company of the Bank of Rome.

151. An act authorising the board of supervisors of the county of St. Lawrence to raise money to build bridges in the town of Brasher in said county.

152. An act to amend an act entitled "An act to incorporate the Clinton fire insurance company of the city of New-York," passed April 26, 1831.

153. An act relating to sundry acts granting authority to persons residing near the Highland turnpike to perform highway labor thereon.

154. An act to amend the act entitled "An act to incorporate the Schoharie mutual insurance company."

155. An act to incorporate the president, directors and company of the Schenectady bank.

156. An act concerning the pilots of the channel of the East river, commonly called Hell-Gate.

157. An act to amend the charter of the Hudson river bank.

158. An act declaring the mode of proving the ordinances of the common council of the city of New-York, and other records, documents and proceedings.

159. An act to authorise Benjamin de St. Croix and others to change their names.

160. An act to incorporate the Albion and Tonawanda rail-road company.

161. An act to divide the town of Mina, in the county of Chautauque.

162. An act to incorporate the New-York and Albany rail-road company.

163. An act to amend the act passed April 22, 1831, entitled "An act to provide for sick and disabled seamen."

164. An act to amend an act entitled "An act to authorise the construction of a canal from the head of Seneca lake to Elmira."

165. An act to extend the charter of the bank of Orange county for a limited period.

166. An act to incorporate the Saratoga and Fort-Edward rail-road company.

167. An act to incorporate the Warren county rail-road company.

168. An act relating to the sale of lands belonging to the Mount-Hope and Lumberland turnpike road company.

169. An act altering the name of Thomas J. Crow.

170. An act relating to the recording of mortgages belonging to the trustees of Franklin academy, in the county of Franklin.

171. An act to continue the act entitled "An act to enable resident aliens to hold and convey real estate."

172. An act to change the name of Frederick Charles Bruce, and others therein named.

173. An act to incorporate the Watertown and Rome rail-road company.

174. An act to incorporate the Black river company.

175. An act to incorporate the New-York fire insurance company, of the city of New-York.

176. An act to revive and amend an act entitled "An act to incorporate the Bell-vale turnpike company," passed March 9, 1810.

177. An act to extend and continue in force the incorporation of the Schenectady manufacturing company.



178. An act authorising the appointment of a supreme court commissioner, to reside in the western part of the county of Onondaga.

179. An act to incorporate the city of Buffalo.

180. An act to incorporate the Little Falls manufacturing company.

181. An act authorising the board of supervisors of the county of Franklin to raise money to build a bridge in the town of Chateaugay, in said county.

182. An act to authorise Harvey H. May to erect a dam across the Genesee river, in the town of Amity, in the county of Allegany.

183. An act to authorise the board of supervisors of the county of Columbia to raise certain monies in the town of Kinderhook, and for other purposes.

184. An act to incorporate the American fire insurance company of the city of New-York.

185. An act to incorporate the village of Geddes.

186. An act to extend the charter of the Middleburgh bridge company.

187. An act to amend the act incorporating the firemen's insurance company of the city of Albany.

188. An act to authorise Edmund Frost and others to build a draw-bridge over the Bushwick creek.

189. An act to divide the town of China, in the county of Genesee.

190. An act for the relief of Peter Augustine.

191. An act to amend an act for extinguishing fires in the village of Flushing, in Queens county, passed March 24th, 1809.

192. An act concerning elections in the town of Stuyvesant, in the county of Columbia.

193. An act concerning the Brooklyn savings' bank.

194. An act for the relief of the trustees of the town of Rotterdam, in the county of Schenectady.

195. An act to authorise the supervisors of the county of Rensselaer to raise a tax, to complete the court-house in said county.

196. An act to revive and continue in force the charter of the New-York typographical society.

197. An act for the relief of the personal representatives of John Thurman, deceased.

198. An act to incorporate the Palladium fire insurance company of the city of New-York.

199. An act authorising Jared Ketchum to erect a dam in the Canisteo river.

200. An act to amend the act entitled "An act to incorporate the village of Fredonia," passed May 2d, 1829.

201. An act to consolidate and amend the charter of the village of Herkimer.

**202.** An act to incorporate the West-Point and Cornwall turnpike company.

**203.** An act to provide for a permanent district school in Syracuse.

**204.** An act for the preservation of salmon trout in the waters therein mentioned.

**205.** An act to incorporate the Lake Champlain and Ogdensburgh rail-road company.

**206.** An act to incorporate the president, directors and company of the Salina bank.

**207.** An act to amend the act entitled "An act to incorporate the Buffalo and Hamburg turnpike company," passed January 23, 1830.

**208.** An act to incorporate the Poughkeepsie whaling company.

**208.** An act to incorporate the Hyde-Park dry dock and manufacturing company.

**210.** An act to repeal certain provisions of the Revised Statutes which require the clerks of the supreme court to procure and keep records of transcripts of judgments docketed in the clerk's office of the circuit and district courts of the United States.

**211.** An act to amend the provisions of the Revised Statutes, entitled "Of the removal of causes to the court of common pleas by certiorari."

**212.** An act to survey and settle the north boundary line of the county of Putnam.

**213.** An act to renew the charter of the American coal company.

**214.** An act in relation to the village of Watertown.

**215.** An act to incorporate the Commercial insurance company of the city of New-York.

**216.** An act to incorporate the Elmira and Williamsport rail-road company.

**217.** An act to incorporate the village of Geneseo.

**218.** An act to incorporate the president, directors and company of the Leather manufacturer's bank.

**219.** An act to incorporate the Redford glass company.

**220.** An act to confirm the appraisement of damages on the Malden turnpike road.

**221.** An act for the relief of David Barnes.

**222.** An act to authorise the formation of fire companies.

**223.** An act to amend the act entitled "An act to provide for the instruction of the deaf and dumb within the state," passed April 16, 1822.

**224.** An act to incorporate the New-York and Erie rail-road company.

**225.** An act to confirm the appraisement of damages on the Saugerties and Woodstock turnpike road.

226. An act to incorporate the Dashville Falls manufacturing company.

227. An act to change the place of payment of the Indian annuities to the St. Regis and Caughnawaga tribes of Indians, and for other purposes.

228. An act to amend an act, entitled "An act appointing commissioners to lay out and establish a road from the village of Rochester, in Monroe county, to Lockport, in the county of Niagara," passed April 2, 1827.

229. An act for the relief of David Broome.

230. An act authorising the inhabitants of Oneida Castleton to erect certain buildings on the public square.

231. An act declaring a part of Ox creek a public highway.

232. An act to amend the charter of the Jackson Marine Insurance company of the city of New-York.

233. An act to incorporate the Auburn and Canal rail-road company.

234. An act for the relief of the widow and children of Jean Pierre Blanc, deceased.

235. An act to authorise the supervisors of Oneida county to defray the expenses incurred under the provisions of the Revised Statutes relating to habitual drunkards.

236. An act to divide the town of Conewango, in the county of Cattaraugus.

237. An act to appoint commissioners to lay out a road from Geneseo, Livingston county, to Canandaigua, in Ontario county.

238. An act authorising the supervisors of the county of Livingston to raise money to build a bridge over the Genesee river.

239. An act to incorporate the Washington county insurance company.

240. An act authorising the removal of certain records from the clerk's office in Ulster county, to the clerks' office of the counties of Sullivan, Delaware and Greene.

241. An act to incorporate the Tonawanda rail-road company.

242. An act relative to the city of Albany.

243. An act to authorise the Superintendent of the Onondaga salt springs to lease lots, and for other purposes.

244. An act for the relief of the Stockbridge Indians.

245. An act authorising Virgil Whitney and Hazard Lewis to maintain a dam across the Susquehannah river.

246. An act concerning costs in certain suits brought in the name of the people.

247. An act to incorporate the president and directors of the Centre bridge company in the village of Unadilla.

248. An act altering the time of electing representatives in the twenty-third Congress of the United States.

249. An act providing for the distribution of the electoral law.
250. An act to incorporate the president, directors and company of the Essex county bank.
251. An act declaring thirty miles of the east end of the Lake Erie turnpike road a public highway.
252. An act to incorporate the eastern dispensary of the city of New-York.
253. An act to divide the town of Bethlehem, in the county of Albany.
254. An act to annex a part of the town of Wales to the town of Alden, in the county of Erie.
255. An act to authorise the assessment and collection of certain monies within school district number eleven, in the town of Farmington.
256. An act to incorporate the Brooklyn and Jamaica rail-road company.
257. An act further to amend the act entitled "An act to authorise Benajah Byington to search for rock-salt in the county of Onondaga," passed April 13, 1820.
258. An act for the relief of Frederick Milligan.
259. An act continuing a ferry across the Schoharie river.
260. An act to incorporate the Hamilton water association.
261. An act to incorporate the Good-Hope insurance company of the city of New-York.
262. An act to incorporate the Schoharie and Otsego rail-road company.
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264. An act to extend the charter of the New-York coal company, and to change the name thereof.
265. An act authorising Asa H. Perry to change his name.
266. An act to amend an act entitled "An act for the relief of the Orphan Asylum society in the city of New-York."
267. An act authorising the president, directors and company of the Otsego lake turnpike, to remove their toll-gate.
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269. An act to extend the time for filling up the stock of the Neptune bell marine insurance company, of New-York.
270. An act to amend the charter of the Poughkeepsie savings bank.
271. An act to incorporate the Poughkeepsie manufacturing company.
272. An act to incorporate the Rome aqueduct company.
273. An act imposing a tax on dogs in the counties of Richmond, Rockland, and Westchester.

**274. An act for the more effectual improvement of roads and bridges.**

**275. An act to incorporate the village of Fort-Plain, in the county of Montgomery.**

**276. An act regulating suits on bills of exchange and promissory notes.**

**277. An act in relation to state prisons.**

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